*Mr. Faulks.* No questions.

*Mr. Ward.* No questions.

GEORGE M. KASEMAN, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you reside? A Brooklyn, New York.

Q Do you live in the State of New Jersey? A No, sir.

Q Have you any connection with the company called the Chilmark Company? A I have.

Q What is your connection with it? A President and director.

Q What is your regular business? A Real estate broker.

Q Where do you operate? A Brooklyn.

Q Where is your office? A 367 Fulton street, Brooklyn.

Q Is it your own office or are you connected with some other office? A It is my own office.

Q How long have you been president and director of the Chilmark Company? A Ever since the formation of the company or shortly after.

Q Do you remember when that was? A About three years ago, I think.

Q Do you remember where the company was incorporated? A Yes.

Q Where was it? A Mr. Nicholson's office.

Q Mr. Douglas Nicholson? A Yes.

Q Where was his office at that time? A 203 Broadway, New York City.

Q Who was present at the incorporation meeting besides yourself? A Mr. Smith and Mr. Linz, I think.

Q Mr. Nicholson there, too? A Yes, he was there, too.

Q Do you know or did you before that know Mr. Smith? A I did not.

Q His name was Arthur L. Smith? A I did not.

Q That is the man? A Yes.

Q Previous to that did you know Mr. Linz? A I did not.

Q How did you happen to fetch up there at an incorporation meeting?

*Mr. Ward.* I object on the ground that it is not relevant to any of the issues between the complainant and the Pacific Navigation Company.

A At the request of Mr. Nicholson.

Q Did you know Mr. Nicholson before that? A I knew him a long time before that.

Q A neighbor of yours in Brooklyn? A No.

Q Then how did you know him? A Through a corporation Mr. Nicholson and I were employed in some years previous.

Q What was the name of that corporation? A The Forcite Powder Company.

*Mr. Ward.* Objected to as immaterial.

Q Do you own any stock in this Chilmark Company? A I do.

Q How much? A One share.

Q Did you pay for it? A No.

Q Who gave it to you? A I don't know exactly who gave it to me—Mr. Nicholson.

Q You got it through Mr. Nicholson? A Yes.

Q What business does the Chilmark Company carry on? A I don't know as they transacted any business.

*George M. Kaseman, direct.*

Q Have they ever transacted any business, to your knowledge? A Not to my knowledge, no.

Q You have been president ever since the incorporation? A Yes.

Q How often do the directors of the Chilmark Company meet?

*Mr. Faulks.* May it be understood that we object to this line of testimony as irrelevant, immaterial and incompetent without renewing it?

*Mr. English.* Yes, sir.

A They have met two or three times, to my knowledge; that is all I know.

Q Since it was incorporated? A Yes, sir.

Q How often do the stockholders meet? A About the same number of times.

Q About once a year? A Yes.

Q Annual meeting? A Yes.

Q There is already in evidence in this case the minutes of the incorporators meeting, C. 41, which you say you attended; do you remember what business was transacted at that meeting besides the incorporation of the company?

*Mr. Ward.* I object on the ground that the minutes speak for themselves.

A I don't really recall.

*Mr. Faulks.* Show him the minutes; it is only fair, I think.

(Minutes shown to witness.)

*Witness.* I don't remember that.

Q You remember the business which was transacted at the meeting as appears from the minutes, Exhibit C. 41? A Yes.

Q And did you vote on that proposition? A Yes.

*Charles H. Bowen, direct.*

Q Did you have any personal knowledge of the value of the property which your Chilmark Company was buying? A I did not.

Q Whose judgment did you take on that? A Mr. Nicholson's.

Q What he told you on that? A Yes.

Q You and your co-directors voted as appears from this extract from the minutes, on the strength of Mr. Nicholson's say so? A Yes.

Q Whatever you did, you did at his request? A Yes.

Q And you had no personal knowledge of the thing at all, and you haven't yet, have you? A No.

Q And you were in this thing simply to accommodate your friend, Mr. Nicholson? A That is the idea.

*Cross examination* by Mr. Faulks.

Q You have known Mr. Nicholson a number of years? A Yes.

Q A friend of yours? A Yes.

Q And have acted in this matter as director and officer of this company at his request? A Yes.

CHARLES H. BOWEN, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A Boston.

Q Do you live in the State of New Jersey? A I do not.

Q What is your business? A Banker.

Q Connected with any institution? A Secretary of American Trust Company of Boston.

Q Who is the president of that Company? A Russell G. Fessenden.

Q Has that company any business relations with the Metropolitan Steamship Company of New Jersey? A Yes.

Q What? A Trustee under a mortgage of November 15, 1909.

Q A mortgage to secure bonds? A Yes.

Q Did your Trust Company have any connection with the prior Metropolitan Steamship Company which was a corporation of the State of Maine, and known in this record as Maine Company No. 1? A We were trustee under the prior mortgage of the Maine Company No. 1.

Q And that company, I think, went in the hands of the receivers? A It did.

*Mr. Faulks.* By prior mortgage, you mean the earlier mortgage?

*Witness.* The mortgage of the Metropolitan Steamship Company of Maine.

*Mr. Faulks.* That was foreclosed?

*Witness.* That was foreclosed.

Q You know the fact that it was in the hands of the receivers and that there was a receiver's sale? A There was.

Q And purchased by a committee of the bondholders? A I understand not.

Q Not a committee of the bondholders, but what kind of a committee? A A reorganization committee, under which Mr. Shaw, Mr. McKinnon and Mr. Hornblower were called the reorganization managers.

Q And they purchased the property at the receivers' sale? A I believe the property was purchased by Mr. John W. McKinnon—the facts I will have to substantiate—in behalf of the committee.

Q Was there a committee of bondholders? A There was.

Q And do you know who the gentlemen on that committee were? A Mr. Russell G. Fessenden, Oliver E. Williams and Frederick F. Murray.

Q The Mr. Fessenden you named is the same gentleman that is president of your Trust company? A Yes.

Q Do you know what relation there was between the bondholders of the original company, Maine, No. 1, and the bondholders of the New Jersey Company?

*Mr. Faulks.* I object to that as calling for a conclusion on the part of the witness, and I object to the subject matter.

A No, I cannot answer the question as put.

Q You were trustee of the bondholders of the old Maine Company No. 1? A Yes.

Q You were also trustee of the bondholders of the New Jersey company? A Yes.

Q To your knowledge was there any exchange made of bonds of the old company for bonds of the new company? A There was.

Q What was that arrangement?

*Mr. Faulks.* Objected to as immaterial. Was that arrangement in writing or an oral arrangement?

*Witness.*. I don't know what you mean—the change was made under a proposed plan of reorganization, in which the arrangement for the delivery of the securities of the New Jersey company for those of the Maine company was made.

*Mr. Faulks.* Was that proposed plan of reorganization in writing?

*Witness.* It was.

*Charles H. Bowen, direct.*

*Mr. English.* That is already offered in evidence.

*Mr. Faulks.* Then it speaks for itself and the witness cannot properly be asked to state what its contents are.

Q Did your company manage the exchange of the bonds of the Maine Company No. 1 for bonds of the New Jersey Company? A That requires a whole lot of explanation, in this respect: in going through all the details, in order to answer that properly, you must go into all the details of the exchange.

Q I simply want to know if your company did act as the medium of that exchange? A We did.

Q So that the bondholders of the old Maine company received in exchange for bonds of that company bonds at par of the New Jersey company?

*Mr. Faulks.* Same objection.

A With the exception that the delivery of the New Jersey bonds not identically delivered to the individuals who were the original owners of the Maine Steamship Company bonds.

Q But the amounts corresponded; a similar amount of the one was exchanged for the same amount of the other? A Yes, sir.

Q Do you remember, roughly, when that took place, approximately what dates? A Sometime in November. I want to qualify that; the exchanges and deliveries were not made until beginning sometime in February; the plan was produced in November, 1909.

Q So that beginning with November 1909, for a month or two following whatever time was necessary to close it up those exchanges took

place? A The exchanges began to take place sometime in February of the following year.

Q Have you any knowledge of any request of the Metropolitan Steamship Company of New Jersey for a release of any of the property which was covered by the mortgage of which your company was trustee? A I have.

Q It already appears that some application was made to release some freight steamers; have you personal knowledge of that? A Yes.

Q Did you conduct any correspondence in connection with that? A I did.

Q With whom? A Divers persons.

Q Can you name any of them? Mr. McKinnon? A Yes, Mr. McKinnon, Metropolitan Steamship Company.

Q Mr. Carrington, did you correspond with him any? A I believe so.

Q And the Chase National Bank? A Yes.

Q And from the point of view of your Trust company in outline, what was the procedure which resulted in the giving of a release by your company of the lien of the mortgage on the freight boats?

*Mr. Faulks.* I object to that as being an improper question, and because the point of view of the Trust company is of no importance. The witness, I think, ought to be requested to state what was done.

Q What was done to bring about the release of the freight boats from the lien of the mortgage? A That is evidenced by the papers there.

*Mr. Faulks.* You mean the papers Mr. English has?

*Witness.* Yes, the papers I produced in connection with the subpoena.

Q Who acted for your Trust company in New York in the matter? A In what respect?

Q In connection with this release of these freight boats; did you personally go down or did someone in New York act for you? A The Chase National Bank of New York.

Q What did the Chase National Bank do as agent of your Trust company in the matter?

*Mr. Faulks.* I object as irrelevant and incompetent.

*Mr. Ward.* Same objection, and the further objection that it does not appear that the witness is qualified to state what some other person did.

A Delivered the release received for our account and forwarded to us $650,000 bonds of the New Jersey Company.

Q Who on behalf of your Trust company acted in the matter? A That is a broad question; I don't know that I can answer that.

Q Did you attend to the details of it and the correspondence, or you and someone else? A Practically all of it.

Q Did Mr. Fessenden have anything to do with it? A I presume he did.

Q Did you and he act together in the matter on behalf of the Trust company? A Yes.

Q Did you see the correspondence which passed between Mr. McKinnon and Mr. Fessenden in the matter? A Certain correspondence.

Q Do you remember when the question of the release of the freight boats was first discussed or brought up between the Trust company and the officers of the Metropolitan Steamship Company of New Jersey? A Sometime in March, I should say.

Q That is when it was accomplished, but wasn't there some correspondence before that? A I would have to refresh my memory from the correspondence.

Q I show you a copy of a letter which is produced by you from the files of the Trust company, addressed to John W. McKinnon, New York, and apparently signed by the president of the Trust company; do you know about the writing of that letter, of which I show you a copy, dated December 6, 1909? A No, nothing except having seen this.

Q That was Mr. Fessenden's letter? A Yes.

Q Do you know what your Trust company required preliminary to releasing the freight boats from the lien of the mortgage? A I will have to refresh my memory; the papers are all there and speak for themselves.

Q I show you a copy of a letter addressed to the Chase National Bank of New York, dated March 1, 1910; look at it and see if that is a carbon copy of the letter which you wrote? A It is.

Q And you sent the original or had the original of that letter sent to the Chase National Bank? A I did.

Q And that relates to this question of the release of these freight boats?

*Mr. Faulks.* The letter will speak for itself.

*Mr. English.* I offer the letter in evidence.

(Marked Exhibit C. 43.)

*Mr. Faulks.* We object to the receipt of this letter in evidence on the ground that it and its contents are immaterial, irrele-

vant and incompetent and not binding upon the defendants whom we represent.

*Mr. Ward.* Same objection, and the further objection that no ground has been laid for introducing secondary evidence of the letter.

It is stipulated and agreed that true copies of the exhibits which are produced and marked may be used in lieu of the originals.

Q At the time of the sending of that letter, Exhibit C. 43, had your Trust company received a letter from Mr. McKinnon, president of the defendant company, requesting that your Trust company release the freight boats, and to aid you to answer that, I show you a letter addressed to the American Trust Company, Trustee, by J. W. McKinnon, dated February 18, 1910; do you remember that your company received that letter? A I do.

Q Are any resolutions attached to that? A A certified copy of a resolution.

Q Of the directors of the defendant company? A Yes.

*Mr. Faulks.* It is understood that our objection goes to this entire line of evidence?

*Mr. English.* I am entirely willing to have that understood.

Q Which resolution is certified as having been passed on the 18th of February, 1910? A Yes.

Q And there is also attached the affidavit of Messrs. Shaw and McKinnon, directors of the defendant company? A Yes.

*Mr. English.* I offer those in evidence, but call attention to the fact that they are the same papers as are already in evidence, on the testimony of Mr. McKinnon, and marked Exhibit C. 5.

(Originals produced and marked Exhibit C. 5.)

*Mr. Faulks.* While renewing our objection to the receipt of these papers in evidence, we agree that they be marked Exhibit C. 5, as the copies already offered were marked with that number, it being understood that the lead pencil alterations in the originals are to be disregarded.

Q It appears that there are some lead pencil alterations in that part of the last exhibit which you produce, which is the affidavit of Messrs. Shaw and McKinnon; was any subsequent affidavit furnished by these gentlemen? A There was.

Q I show you what seems to be an original affidavit by them, dated February 23, 1910; was that received by your Trust company? A It was.

Q Why?

*Mr. Ward.* I object.

*Mr. Faulks.* We make the same objection and the further objection that the question calls for a conclusion on the part of the witness.

Q Did your Trust company request a different affidavit than that which was originally received? A I cannot answer.

Q In fact you got a different one? A We did.

Q And the one which you hold in your hand is that different one? A Yes.

Q And that was filed with the papers? A Yes.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 44.)

Q Following the receipt of this letter with the resolution attached, which is Exhibit C. 5, did your company cause any appraisal to be made of the property requested to be released? A We did.

Q Who were your appraisers? A Mr. Andrew Fletcher and Mr. Calvin Austin.

*Mr. Faulks.* Mr. Fletcher of Hoboken?

*Witness.* Yes, of Hoboken.

Q Do you know of any letter which Mr. Fessenden wrote Mr. Austin requesting this appraisal? A I do.

Q I show you a copy of a letter dated February 19, 1910, addressed ,"Mr. Calvin Austin"; is that the letter which you spoke of? A Yes.

Q And that was written by Mr. Fessenden? A It was.

Q And following that letter and under date of February 21, 1910, was a letter received from Mr. Austin setting forth his figures? A There was.

Q And that letter was addressed to Mr. Fessenden? A It was.

Q Is this the original which I show you? A Yes.

Q And was there attached to the letter of Mr. Austin the figures upon which he based his appraisal, and are they the originals which I

show you attached to that letter? A They are.

*Mr. English.* I offer in evidence the letter of Mr. Fessenden to Mr. Austin, dated February 19, 1910, (Marked Exhibit C. 45); also the letter of Mr. Austin to Mr. Fessenden, dated February 21, 1910, (Marked Exhibit C. 46); and also the figures attached to the letter of Mr. Austin, which are in two sheets (Marked Exhibit C. 47.)

*Mr. Faulks.* We have no objection to the receipt in evidence of these papers, but I call your attention, however, to what seems to be a manifest error on the second page of the figures comprising Exhibit C. 47, where the date is given as July 21, 1910; it is evidently intended to be February 21, 1910, which is the date of the latter and the date of the first sheet of the figures.

Q I show you a paper to which is annexed the seal of the Hudson Navigation Company and the signature Campbell Carrington, secretary of the Hudson Navigation Company, taken from your original papers, and ask you what that is? I first ask you if your trust company received that? A It did.

Q And in connection with what transaction? A In connection with the release of the vessels.

Q And that was furnished to you at your request or your company's request? A That I cannot answer at whose request.

Q At any rate, it came? A Yes.

*Mr. English.* I offer that in evidence, being a resolution of the directors of the

Hudson Navigation Company, consenting on behalf of that company as the owner of 693 bonds of the Metropolitan Steamship Company of New Jersey, to the release of the freight boats and barges of that company.

(Marked Exhibit C. 48.)

Q I show you a paper which is apparently a copy of a release executed by the American Trust Company of the freight boats which have been mentioned, and I ask you if that is a duplicate of a copy of the release which was sent to the Chase National Bank in the letter Exhibit C. 43? A It is a copy.

*Mr. English.* I offer that in evidence.

*Mr. Faulks.* We make no objection on the ground that it is a copy rather than the original, but we do object to its receipt upon the ground that it and its contents are immaterial, irrelevant and incompetent. In connection with all of these papers we reserve the right to see that they are true copies.

(Marked Exhibit C. 49.)

Q Following the sending of that release did you receive from the Chase National Bank a letter addressed to you as secretary, dated March 5, 1910, which I now show you? A I did.

*Mr. English.* I offer in evidence the letter referred to by the witness.

*Mr. Faulks.* We object to this letter on the ground that it and its contents are immaterial, irrelevant and incompetent, and

not binding upon or evidential as against any of the defendants whom we represent.

*Mr. Ward.* Same objection and the further objection that the letter is not competent to prove the delivery of the release and the receipt of the bonds.

*Mr. Faulks.* I join in that objection.

(Marked Exhibit C. 50.)

Q Did you receive the bonds which are listed in that letter? A We did.

Q Where are they at the present time? A In our vault.

Q And what is their status under the mortgage?

*Mr. Faulks.* It being understood that our objection stands as to the questions with reference to the receipt of the bonds, I make the further objection to this question, that the witness cannot properly be asked to state what the status of the bonds is; he cannot properly be asked to characterize the matter in this way.

*Mr. Ward.* Same objection.

A I cannot answer it as you put it.

Q What has been done with these bonds since their receipt by you? A Put in the vault.

Q Are the coupons being paid on these bonds? A They are not.

*Mr. Faulks.* Same objection to all this line.

Q How are they held then by your company? A As trustee under the mortgage.

Q Are they in any sense canceled bonds?

*Mr. Faulks.* We object on the further ground that it calls for a conclusion on

the part of the witness and he ought to state what has been done or what has not been done.

A They are not.

Q Was application made to your company as trustee under the mortgage to release any other property beside the freight boats? A There was.

Q What was that property? There were two releases made of boats or dock properties? A Dock property.

Q Was one of those dock properties what is known as the Union Wharf in this city? A It was.

Q And in connection with that matter did you receive copies of any resolutions of directors of the defendant company, the New Jersey company? A We did.

Q I show you here a paper under the seal of the Metropolitan Steamship Company of New Jersey, tested by Douglas Nicholson, secretary, purporting to be a certified copy of certain minutes of the said company; did you receive that? A I did.

Q As part and parcel of this release of these various properties?

*Mr. Faulks.* I object to that question; it is not competent for the witness to testify that anything is part and parcel of anything else, or of any particular transaction; the instrument speaks for itself.

A It is one of the instruments delivered to us in connection with the application for the release.

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*Mr. English.* I offer in evidence the certified copy of the resolutions, which certificate is dated March 8, 1910.

*Mr. Ward.* I object on the ground that the instrument is immaterial, irrelevant and not evidential against the Pacific Navigation Company.

*Mr. Faulks.* I join in that objection.

(Marked Exhibit C. 51.)

Q I show you a paper entitled "Secretary's Certificate," to which is affixed the seal of the defendant company and the signature of Douglas Nicholson, secretary, dated June 22, 1910; was that also received in connection with these various release matters? A It was.

*Mr. English.* I offer that in evidence.

*Mr. Ward.* I make the same objection.

(Marked Exhibit C. 52.)

Q I show you another paper entitled "Secretary's Certificate," under the seal of the defendant company, and the signature of Douglas Nicholson, secretary, dated June 29, 1910; did you receive that? A We did.

Q And that was in connection with the application to release the Union Wharf?

*Mr. Faulks.* I object. I do not object to this stating when they received it or from whom, but I do object to any characterizations of this kind.

A It was.

*Mr. English.* I offer that in evidence.

*Mr. Ward.* Same objection as to C. 51.

(Marked Exhibit C. 53.)

*Charles H. Bowen, direct.*

Q I show you a paper which is chronologically out of order, but which is a paper signed and sworn to by J. Turner Grieve, Joseph B. Righter and Douglas Nicholson, on June 17, 1910, before William Byrne, commissioner of deeds of New York, and I ask if you received that in connection with this general matter? A We did.

*Mr. Faulks.* I object to the words "in this general matter."

Q Did you receive that in connection with the Union Wharf property matter? A I did.

*Mr. English.* I offer that in evidence.

*Mr. Ward.* Same objection as to C. 51.

(Marked Exhibit C. 54.)

Q Did the Chase National Bank of New York act for you in the matter of the Union Wharf as in the matter of the freight boats? A It did not.

Q What concern, if any, in New York did? A None.

Q How was that matter managed? A Delivered over the counter.

Q And to whom was the release executed by your company delivered over the counter, as you expressed it? A To B. E. Case.

Q And who is B. E. Case, if you know? A He signed as treasurer of the Metropolitan Steamship Company of Maine.

*Mr. English.* Known as Maine No. 2 on the record.

Q Did your company join in the deed or other indenture with the Metropolitan Steamship Company in connection with the Union Wharf property? A It joined in a deed with the Met-

ropolitan Steamship Company of New Jersey to the Metropolitan Steamship Company of Maine.

Q The American Trust Company and Metropolitan Steamship Company of New Jersey executed a deed to the Metropolitan Steamship Company of Maine? A Executed it so far, on the part of the Trust company, as it was a release.

Q You executed a paper to this Maine Company No. 2? A Yes.

Q I show you from your original files what purports to be a copy of that release; is that correct? A It is.

*Mr. English.* I offer in evidence the copy of the release and deed for the Union Wharf, which is dated June 17, 1910, executed by the Metropolitan Steamship Company, by J. Turner Grieve, president, and Douglas Nicholson, secretary, and by the American Trust Company, by R. G. Fessenden, president, and C. H. Bowen, secretary, last referred to by the witness.

*Mr. Ward.* Same objection.

*Mr. Faulks.* We object to the receipt of this instrument on the ground that it and its contents are irrelevant, immaterial and incompetent.

(Marked Exhibit C. 55.)

Q Did you meet or hear of a Mr. Edward T. Canfield in connection with this matter of the Union Wharf property? A I did not.

Q Did you receive from Mr. B. E. Case any written acknowledgment of the receipt of this deed and release which is marked Exhibit C. 55? A We did.

Q And is the paper dated June 29, 1910, addressed to your company as trustee, and Metropolitan Steamship Company of Maine, by B. E. Case, treasurer, the letter which you received from him? A It is.

*Mr. English.* I offer that in evidence.

*Mr. Ward.* Same objection.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 56.)

Q Do you know Mr. Case other than as you met him in that transaction? A No.

Q. Did your trust company receive the bonds which are mentioned in these last two exhibits, C. 55 and 56?

*Mr. Faulks.* Same objection.

A We received $350,000 of bonds.

Q And did your company, through yourself as secretary, give a writing to that effect to the Metropolitan Steamship Company of Maine, No. 2? A Yes, sir.

Q I show you a copy of a letter dated June 29, 1910, addressed to the Metropolitan Steamship Company of Maine, Mr. B. E. Case, treasurer, Boston, Massachusetts; is that the carbon copy of the letter which you gave? A It is.

*Mr. English.* I offer that in evidence.

*Mr. Ward.* Same objection. May I not have it understood that I make one objection on the ground of immateriality and irrelevancy, so far as my clients are concerned, to the entire line of testimony that has been taken?

*Mr. Faulks.* I make the same objection to this matter.

*Mr. English.* That is perfectly satisfactory to me.

Q Where are those $350,000 of bonds last mentioned? A In our vault.

Q Have they been canceled? A They have not.

*Mr. Faulks.* Same objection as I made to the question of the cancelation of the $650,000 of bonds.

Q Have you any knowledge of any other offer than that which was consummated with the Metropolitan Steamship Company of Maine for the sale of this same Union Wharf property? A We had a copy of a letter from Horace G. Allen; that is a copy of the letter sent by him to the Metropolitan Steamship Company of New Jersey.

Q Received by you? A A copy was received by us.

Q Who is Mr. Horace G. Allen? A I don't know him. He is an attorney.

Q I show you a letter addressed to American Trust Company, Boston, Massachusetts, dated June 20, 1910, signed H. G. Allen, to which is annexed a copy of a letter of the same date, addressed to the Metropolitan Steamship Company of New Jersey, and ask you if that is the correspondence you last referred to?

*Mr. Ward.* I object on the ground that it is not a proper method of proof of an offer.

*Mr. Faulks.* I make the same objection.

A It is.

*Mr. English.* I offer as one exhibit the letter of Mr. Allen to the Trust company, dated June 20, 1910.

(Marked Exhibit C. 58.)

And as a separate exhibit, I offer the letter addressed by Mr. Allen to the Metropolitan Steamship Company, of the same date, attached to the first letter.

(Marked Exhibit C. 59.)

*Mr. Ward.* I enter the further objection to C. 58 and C. 59, that they are subsequent in date to the execution of the release by the American Trust Company to the Metropolitan Steamship Company of New Jersey, and the conveyance by the New Jersey Company to the Maine Company No. 2.

*Mr. Faulks.* I join in the objection made by Mr. Ward, and if he has not already done so, I object to the receipt in evidence of either the original of June 20, 1910, purporting to have been written by Mr. Allen to the American Trust Company, and the copy of the letter of the same date, addressed to the Metropolitan Steamship Company of New Jersey, but not signed, upon the ground that neither of these letters are proved, and that they are not sufficient evidence of the offer about which the witness has been interrogated.

Q I show you Exhibit C. 55, which was the deed and release for the wharf property, which is dated June 17, 1910, and I also show you the letter of acknowledgment of receipt of that paper, signed by Mr. Case, which is C. 56, and which is dated June 29, 1910, and I ask you, if refreshing your recollection from those papers

you can say when the deed C. 55 was delivered? A Delivered on June 29, 1910.

Q Prior to that date did you bring to the attention of the Metropolitan Steamship Company the fact of the offer of Mr. Allen on behalf of his client? A I haven't any recollection.

Q Have you any recollection of any advice from them on that subject? A No.

Q Have you any knowledge of any protest or objection by Mr. Allen, on behalf of his client, to the closing of the matter with the Metropolitan Steamship Company of New Jersey? A There was some correspondence; I should have to refresh my memory by reading it.

Q I show you herewith a letter of August 18, 1910, addressed to your company by Mr. H. G. Allen, and I ask you if your company received that letter? A It did.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 60.)

*Mr. Faulks.* I object to it on the ground that the letter is not proved, and in any event would not be proper proof of the matters stated therein.

*Mr. Ward.* I make the same objection as to C. 58 and C. 59.

Q Do you know whether this letter was brought to the attention of the Metropolitan Steamship Company? A I don't know.

*Mr. Ward.* Does it appear when the American Trust Company received the letter C. 60?

Q What date did the Trust Company receive that letter, C 60? A August 19.

Q Have you knowledge of any application by the Metropolitan Steamship Company of New

Jersey to your trust company to release the lien of the mortgage on the property known as the India Wharf? A The application for a release of the lease of India Wharf.

Q What was that lease that you were asked to release? A I am unable to answer that question, never having seen the lease.

Q But the lease is one of the properties mortgaged? A It was part of the mortgaged premises.

Q I show you a paper dated May 15, 1911, under seal of the Metropolitan Steamship Company of New Jersey, and executed for the company by Thomas C. Hughes, president, and R. T. Martinsen, secretary, and ask you if that was received by your company? A It was.

Q And that is the request for the release of the India Wharf? A Yes.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 61.)

Q In connection with that same matter, did you receive another paper, which I show you, dated the blank day of May, 1911, under the seal of the defendant company, attested by R. T. Martinsen, secretary? A I did.

*Mr. English..* I offer that in evidence.

(Marked Exhibit C. 62.)

Q Did you, following the receipt of those papers, execute a release to the Metropolitan Steamship Company of New Jersey for this India Wharf? A We did.

Q And sent it to Mr. Martinsen for that company? A Yes.

Q And did you receive a letter from Mr. Martinsen, acknowledging receipt of the paper? A I did.

*Charles H. Bowen, direct.*

Q I show you letter dated June 10, 1911, addressed to your company, signed R. T. Martinsen, treasurer; is that the letter of receipt you mentioned? A It is.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 63.)

Q I show you what purports to be a copy of a release executed by your trust company to the Metropolitan Steamship Company of New Jersey; is that the copy of the release which is referred to in the last letter, Exhibit C. 63? A It is.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 64.)

Q Go back for a moment to the Union Wharf matter; do you know a lawyer of Boston named John Abbott? A I do.

Q Did you receive a letter from him in connection with the Union Wharf matter? A We did.

Q I show you a letter signed John Abbott, addressed to the American Trust Company, dated June 22, 1910; is that the letter you speak of? A Yes.

*Mr. English.* I offer that letter in evidence.

*Mr. Faulks.* We object to this as immaterial, irrelevant and incompetent.

(Marked Exhibit C. 65.)

Q Was that letter brought to the attention of the Metropolitan Steamship Company? A It was not.

Q I find among the papers produced by your company certification by Campbell Carrington, secretary of the Metropolitan Steamship Company, under the seal of the company, as to cer-

tain directors; from whom did you receive that? A I should be unable to say.

Q Did you receive it in connection with these general transactions you have been describing?

*Mr. Faulks.* Have you any recollection about it?

*Witness.* I have a recollection of receiving it, but in connection with what particular release, or what papers—I can say what it should have been received in connection with.

Q Do you recollect receiving it at all? A I do.

Q From what company? A From the Metropolitan Steamship Company.

*Mr. English.* I offer it in evidence.

(Marked Exhibit C. 66.)

*Mr. Ward.* Can you say when you received that?

*Witness.* I cannot.

Q You did receive it in connection with some of these releases? A I did.

Q Did you have appraisals made of the Union Wharf property? A We did.

Q It appears from Exhibit C. 47 that an appraisal of that property was included in the appraisal submitted to you by Mr. Calvin Austin, is that correct? A Yes.

*Mr. Ward.* By that you mean the Union Wharf property?

*Witness.* Yes.

Q Did you have any correspondence with the defendant company with reference to the payment of Mr. Austin's bill in the matter? A In what matter?

Q In the appraisal matter—for those appraisals? A The appraisals of the freight steamers, yes, sir.

Q Did you on behalf of your company write a letter to Mr. McKinnon, under date of May 25, 1910, with reference to your company's bill in connection with the release of the property mortgaged? A I did.

Q Is that a copy of the letter which I show you? A Yes.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 67.)

*Mr. Faulks.* Objected to as immaterial and irrelevant.

Q Did you subsequently, and under date of June 13, 1910, address a letter with reference to these same bills, to the Assets Realization Company, John W. McKinnon, vice-president? A I did.

Q Is that a copy of your letter, which I show you? A Yes.

*Mr. English.* I offer it in evidence.

(Marked Exhibit C. 68.)

*Mr. Faulks.* Same objection.

Q Did you in reply to that letter, receive a letter from Mr. McKinnon, under date of June 14, 1910? A I received it on June 15, 1910.

Q And is that the letter of which I show you the original, dated June 14, 1910? A It is.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 69.)

*Mr. Faulks.* Same objection.

*Mr. Ward.* That letter is offered to prove what fact, Mr. English, bearing on what issue?

*Mr. English.* We will develop, as we progress, the connection of the New Haven Railroad and Mr. Robbins with this transaction.

*Mr. Ward.* I object to it so far as it contains statements as to the transfer of "the balance of cash in our hands," &c., to Mr. Nicholson, as being incompetent proof of that fact.

*Mr. Faulks.* I join in that objection.

Q Thereafter did you address a letter to Mr. Douglas Nicholson, treasurer, Metropolitan Steamship Company of New Jersey, under date of June 22, 1910, a copy of which I show you? A I did.

Q And that is a carbon copy of your letter? A It is.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 70.)

*Mr. Faulks.* Same objection.

Q I call your attention to a copy of a letter taken from your files, addressed to E. D. Robbins, counsel, c/o New York, New Haven & Hartford Railroad Company, dated June 27, 1910, and I ask you if you wrote that letter? A I did.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 71.)

*Mr. Faulks.* Same objection.

Q It appears from this letter marked Exhibit C. 71, that Mr. Fessenden had a conversation over the telephone with Mr. Robbins; were you present when that telephone conversation was had? A I was not.

Q Do you know about it from Mr. Fessenden? A I do.

Q Following that letter, Exhibit C. 71, did you on the next day, June 28, 1910, address another letter to Mr. Robbins, a copy of which I show you? A I did.

Q Is that it? (Showing witness letter) A It is.

*Mr. English* I offer that in evidence.

(Marked Exhibit C. 72.)

*Mr. Faulks.* Same objection.

Q I show you a copy of a letter addressed by you, under date of July 7, 1910, to Mr. Robbins, is that the carbon copy of your letter? A Yes.

*Mr. English.* I offer it in evidence.

(Marked Exhibit C. 73.)

Q Did you on the same date address a letter to Mr. Nicholson as is stated in that exhibit, C. 73? A I did.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 74.)

*Mr. Faulks.* I object to these letters on the same ground and on the further grounds that they do not constitute proof of the matters stated in them.

Q Why did you write this letter Exhibit C. 72. to Mr. Robbins?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

A To get our bills paid.

Q Why did you apply to Mr. Robbins to have your bills paid in connection with the—

*Mr. Faulks.* Same objection.

A As explained in the previous letter, it was written at the suggestion of Mr. Fessenden.

Q Explained in Exhibit C. 71? A Yes.

Q Which letter was written following the telephone conversation between Mr. Fessenden and Mr. Robbins, is that correct?

*Mr. Faulks.* He said he didn't hear the conversation, so he cannot tell whether it was before or after.

A It was.

Q Did you get a reply from Mr. Robbins' secretary, under date of July 12, 1910? A I did.

Q I show you a letter signed J. T. Kelly, secretary, dated July 12, 1910, is that the letter, addressed to you? A Yes.

*Mr. English.* I offer that letter in evidence.

(Marked Exhibit C. 75.)

*Mr. Faulks.* Same objection.

Q Did you receive a subsequent letter from Mr. Kelly, under date of July 15, 1910, advising when Mr. Robbins would return? A I did.

Q That was evidently written in reply to a letter of inquiry by you? A Yes.

*Mr. English.* I offer in evidence the letter of July 15, 1910, by Mr. Kelly to Mr. Bowen.

(Marked Exhibit C. 76.)

*Mr. Faulks.* Same objection.

*Mr. Ward.* I understand my general objection covers all these things?

*Mr. English.* I am satisfied with that.

Q Following that correspondence, and under date of July 19, 1910, did you receive a letter from Mr. Douglas Nicholson, enclosing a check

in payment of your bill? A I received a letter dated July 19, 1910, received July 20, 1910, enclosing a check for $2,802.50.

Q You received that letter from whom? A From Mr. Nicholson.

Q Treasurer of the Metropolitan Steamship Company of New Jersey? A Yes.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 77.)

*Mr. Faulks.* Same objection.

Q Did you under date of July 20, 1910, acknowledge receipt of that to Mr. Nicholson? A I did.

Q Is that a copy of the letter? A Yes.

*Mr. English.* I offer that letter in evidence, being a letter from Mr. Bowen to the Metropolitan Steamship Company, Mr. Douglas Nicholson, treasurer, dated July 20, 1910.

(Marked Exhibit C. 78.)

*Mr. Faulks.* Same objection.

Q I show you a copy of a letter addressed to Mr. Douglas Nicholson, under date of August 2, 1910, which refers to your previous letter of July 20, 1910, Exhibit C. 78; was that letter written from your company? A It was.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 79.)

*Mr. Faulks.* Same objection.

Q I see that was signed by some one "Asst. Secretary?" A W. C. Watt, who was then assistant secretary.

Q Now, I show you a letter dated August 3, 1910, from Mr. Douglas Nicholson, treasurer, stating that it is in reply to the previous letter

of the second instant, C. 79; that was received by your company? A It was.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 80.)

*Mr. Faulks.* Same objection.

Q Following that correspondence and under date of August 10, 1910, do you know whether any letter was received by Mr. Fessenden, president of your Trust company, from Mr. Calvin Austin? A There was, received August 11, 1910.

Q Did that letter come to your hands personally? A Through Mr. Fessenden.

Q Was it handed to you by Mr. Fessenden? A It was.

Q And was there attached to that letter, a letter addressed by Douglas Nicholson to Warren D. Chase, dated August 3, 1910, and also a letter addressed by Edward D. Robbins to Calvin Austin, dated August 9, 1910? A There was.

Q And they were attached to the letter when handed to you by Mr. Fessenden? A They were.

*Mr. English.* I offer in evidence the letter of Calvin Austin to Mr. Fessenden, dated August 10, 1910.

(Marked Exhibit C. 81.)

Also the letter attached to it, from Douglas Nicholson to Warren D. Chase, dated August 3, 1910.

(Marked Exhibit C. 82.)

Also the letter attached to Exhibit C. 81, addressed to E. D. Robbins, from Calvin Austin, dated August 9, 1910.

(Marked Exhibit C. 83.)

*Charles H. Bowen, cross.*

*Mr. Faulks.* Same objection to these three exhibits.

*Cross examination* by Mr. Faulks.

Q Who is Mr. Calvin Austin? A I don't know, as the question is asked; I know Mr. Calvin Austin.

Q What is his business? A He was president of the Metropolitan Steamship Company at one time.

Q You mean the company that we have referred to as the Maine Company No. 1? A Yes.

Q Was he president of that company when you first knew of him? A No, I have known him for a number of years.

Q What business has he been identified with during the time that you have known him? A He has been identified with the Eastern Steamship Company and the Metropolitan Steamship Company.

Q He has been in the steamship business during all that time? A Yes.

Q By whom was he selected as one of the appraisers to appraise the freight boats in February or March, 1910? A The American Trust Company.

Q And who was Mr. Andrew Fletcher that you have spoken of as being one of the appraisers? A He was of the firm of W. & A. Fletcher Company, of Hoboken.

Q What business was that firm engaged in at that time? A Steamboat building, I think.

Q And by whom was Mr. Fletcher selected? A By the American Trust Company.

Q Did Mr. Fletcher make an appraisal as well as Mr. Calvin Austin? A He did.

Q And was that furnished to the Trust company at or about the same time? A I cannot tell.

Q Have you produced that appraisal today? A I have.

Q Will you let me see it? A Yes, sir (producing same).

*Mr. Faulks.* I will ask to have this marked for identification. Is this a copy that we may have? You will consent that this can be marked for identification, as if it were the original, the original being also marked?

*Mr. English.* Yes.

(Marked D. 1 for identification.)

Q Were appraisals of the boats made by anyone other than Mr. Austin and Mr. Fletcher? A Not that I know of.

Q You don't know of any other appraisements being furnished to the Trust company at about that same time? A There were none other.

Q Why were Mr. Austin and Mr. Fletcher selected to make these appraisals? A I cannot answer that. I mean I cannot answer that, I don't know that.

Q In one of the letters that has been offered in evidence there is a reference to a bill of Mr. Eldridge; who was he? A He is a real estate man here in Boston.

Q What work did he do? A I believe he made an appraisal of the Union Wharf.

Q Did he furnish a copy of his appraisal to the Trust company? A He did.

Q By whom was he selected to make that appraisal? A Mr. Fessenden.

Q On behalf of the Trust company? A Yes.

Q How long have you known Mr. Eldridge? A I don't know him.

Q Have you here the appraisal that Mr. Eldridge furnish? A I believe so.

Q Please produce it. A Yes, sir. (Producing same.)

*Mr. Faulks.* I offer it for identification and make the same statement as to marking the original and substituting a copy.

(Marked D. 2 for identification.)

Q Do you know whether any other appraisals were made of either the boats or the Union Wharf property at that time? A Appraisals made of the Union Wharf property by Mr. Russell and Mr. Whittier.

Q And who are Mr. Russell and Mr. Whittier? A Mr. Whittier is a real estate man, engaged in the real estate business. Mr. Russell, I don't know as to his occupation; he is reputed to be a very large owner of wharf property.

Q In Boston? A In Boston.

Q How long had you known those gentlemen at that time? A I know only Mr. Whittier.

Q Had he then had considerable experience in real estate business in Boston? A He had.

Q By whom were these gentlemen engaged to make the appraisal of the Union Wharf property? A By Mr. Fessenden.

Q On behalf of the Trust company? A Yes.

Q Have you the appraisement that they made? A I have. (Producing same.)

Q The paper that you hand me appears to be a joint appraisal by Mr. Whittier and Mr.

Russell; their report was made in that form? A It is a copy of it.

Q There were not separate reports? A There were not separate reports.

Q This paper that you have handed me contains the report of their appraisal? A It does.

*Mr. Faulks.* I offer that for identification.

(Marked D. 3 for identification.)

Q You have given us now, have you, Mr. Bowen, all of the appraisals of the Trust company received at that time, of either the boats or the Union Wharf? A I believe that they have all gone in.

Q Has the American Trust Company ever caused any examinations to be made of the steamers Yale and Harvard? A It has.

Q And has it secured reports based on those examinations and showing the result thereof? A Yes.

*Mr. English.* Speaking of what date?

Q When were these examinations made and the reports received? A In the early part of 1913, and the supplemental examination the latter part of 1913, and another full examination in the early part of 1914.

Q Do you remember by whom these examinations and reports were made? A Edward S. Hough.

Q Have you those reports? A I have.

Q Please produce them? A I have here one of February 8, 1913.

Q Is this the first of the reports thus obtained by the Trust company? A It is.

*Mr. Faulks.* I will ask to have that marked for identification.

(Marked Exhibit D. 4 for identification.)

In order that the original may be returned to Mr. Bowen, I will ask the Master also to mark a copy of this, which I produce.

(Copy also marked Exhibit D. 4 for identification.)

*Mr. English.* To keep my record straight, I will ask the Master to mark a copy of the same paper, which was handed to me by counsel for the Pacific Navigation Company.

(Copy referred to also marked Exhibit D. 4 for identification.)

*Mr. Faulks.* It is understood that these copies may be used with the same force and effect as the original?

*Mr. English.* Yes, subject to proper objections as to materiality.

Q I notice that there is attached to this exhibit, D. 4 for identification, a bill from Edward S. Hough, dated March 5, 1913, to the American Trust Company, Boston, Massachusetts, which bill, according to the endorsement thereon, appears to have been paid under date of March 15, 1913, by trust department check, having also apparently been approved by you as the secretary of the Trust company; was that bill received by the Trust company from Mr. Hough? A It was.

Q Did this bill cover Mr. Hough's services as outlined in the report? A The bill will speak for itself.

Q The bill was paid to him for work that he did for the Trust company at that time? A It was.

Q In connection with the examination of the Harvard and Yale? A It was.

*Mr. Faulks.* I will also ask to have that bill marked for identification.

(Marked Exhibit D. 5 for identification.)

Q There was a further report made some time during 1913; will you produce that? A Yes, sir.

*Mr. Faulks.* Witness has produced and handed me a report, signed Edward S. Hough, San Francisco, California, August 25, 1913, with a letter of the same date, addressed by Mr. Hough to the American Trust Company, and I will ask to have this report and letter marked for identification.

(Marked Exhibit D. 6 for identification.)

*Mr. Faulks.* I will ask the Master to return that to the witness and also mark with the same number a copy of the same papers produced from my files.

(Copy also marked Exhibit D. 6 for identification.)

*Mr. English.* I ask the Master to mark copy of the same papers which have been handed to me by counsel for the defendant Pacific Navigation Company.

(Copy referred to also marked Exhibit D. 6 for identification.)

*Mr. Faulks.* It is understood that the copies may be used with the same force and effect as the original?

*Mr. English.* Subject to proper objections as to materiality and relevancy, yes.

Q You spoke of a third report made, as I understand it, sometime in 1914; have you that report? A I have.

Q Please produce it. A (Producing same.)

*Mr. Faulks.* The witness has produced and handed me a report entitled "Report No. 3 on Turbine Passenger Steamers Harvard and Yale," signed Edward S. Hough, February 19, 1914, and I will ask to have this marked for identification.

(Marked Exhibit D. 7 for identification.)

*Mr. Faulks.* I will ask the Master to return it to the witness and mark with the same number a copy of the same report, produced from files.

(Copy marked Exhibit D. 7 for identification)

*Mr. English.* I ask the Master to mark a copy of mine, produced by the witness.

(Copy referred to also marked Exhibit D. 7 for identification.)

*Mr. Faulks.* It is further understood that a copy of this report may be used with the same force and effect as if it were the original, subject to reservation as to its materiality and competency?

*Mr. English.* I think at this time I ought to object to this line of examination as not cross examination. It is not cross examination of any of the examination in chief. If counsel wishes to make the witness his own witness, I have no objection.

*Mr. Faulks.* If the court should be of the opinion that it is not cross examination, we

will regard the witness as our witness on this branch of his testimony.

Q Did Mr. Hough render the Trust company any further bills for those reports or any of them, other than the one to which I have already directed your attention? A He did.

Q Have you those here? A Yes

Q Please produce them. A (Producing same.)

*Mr. Faulks.* Witness produces a bill from Edward S. Hough to American Trust Company, Boston, Mass., for $125, dated October 4, 1913, and stamped as paid October 21, 1913.

Q Did this bill cover Mr. Hough's charges for the supplemental report of August, 1913? A It did.

Q And was it paid by the Trust company? A It was.

*Mr. Faulks.* I ask to have that report marked for identification.

(Marked Exhibit D. 9 for identification.)

Q You have also handed me a bill from Mr. Hough, dated March 3. 1914, to American Trust Company, Boston, Mass., for $682.50, upon which is written the words "Paid 3/9/14 By Trust Dept."; did this bill cover Mr. Hough's services in connection with the last of the three reports, the one dated February 19, 1914, marked Exhibit D. 7 for identification? A It did.

Q Was this bill paid by the Trust company? A It was.

*Mr. Faulks.* I ask to have that marked for identification.

(Marked Exhibit D. 9 for identification.)

*Charles H. Bowen, cross.*

Q Attached to these bills which you have handed me, I find a copy of a letter addressed to Mr. Edward S. Hough, 112 Market street, San Francisco, Cal., on the letterhead of the American Trust Company, under date of December 4, 1912, and signed blank secretary, the initials being "CHB"; is that a copy of a letter which you wrote Mr. Hough? A It is.

Q In connection with his employment for this work? A It is; it is for the examination.

Q Did you write other letters to Mr. Hough in connection with the making of either his first or third reports? A I have no recollection of the second, although it is quite probable. We did send a similar letter for the third appraisal.

Q Have you a copy of that here? A No.

Q Will you be good enough to furnish us with a copy of that letter? A I will.

*Mr. Faulks.* When we receive that copy, I suppose we may use it with the same effect as if it were the original?

*Mr. English.* Yes, you can offer it when produced.

*Mr. Ward.* I have no cross examination.

*Mr. English.* I omitted one question.

Q (*By Mr. English.*) I call your attention to Exhibit C. 81, to which is attached C. 82 and C. 83, and ask you whether or not Exhibits C. 82 and 83 do or do not appear to be original letters and not copies?

*Mr. Faulks.* We don't dispute that.

A They are the original letters.

RECESS.

CHARLES H. BOWEN, recalled for

*Further direct examination* by Mr. English.

Q Have you personal knowledge of the advertisement for bonds under the sinking fund provision of the trust mortgage? A I have.

Q When was the first advertisement made? A I cannot tell the exact date, but approximately in November, 1912, the first.

Q Were any bonds offered at that time by bondholders? A There were.

Q Do you remember at what price they were offered?

*Mr. Faulks.* Objected to as immaterial, irrelevant and incompetent.

A A great many offers at prices, I should say, from recollection, from 60 to 90.

Q Do you remember approximately how many were taken up at that time?

*Mr. Faulks.* Same objection.

A About $67,000 at an average price of a little over 72.

Q When was the next advertisement made? A On or about November, 1913.

Q Were any bonds turned in then? A There were.

Q At what price were they taken up?

*Mr. Faulks.* Same objection.

A The average price was about 62 and a fraction.

Q Mr. Bowen, it already appears that the bonds of the Maine Company No. 1 were exchanged for bonds of the New Jersey company, par for par; your company had a record of that exchange? A Yes.

*Charles H. Bowen, further direct.*

Q Do your books show to whom bonds of the New Jersey company were delivered upon that exchange? A They do.

Q And they show the numbers of the bonds? A They do.

Q It already appears that you have now in your possession the bonds which were turned back to the Trust company on the release of the freight boats and the Union Wharf? A Yes.

Q Have you, from your records, made up a statement showing the numbers of those bonds which were thus turned back? A Yes.

Q And does that statement show the persons to whom those same bonds had originally been delivered at the time of the exchange of the bonds of the Maine company for the bonds of the New Jersey company? A It does.

Q Is this a copy of the statement which you prepared, which I show you? A It is, but I have got to qualify to answer.

Q I see that the statement refers to $422,000 of bonds numbered 2,485 to 2,906, originally delivered to Ladenburg, Thalmann & Co., New York, with a foot note stating that the temporary bonds exchanged for these permanent bonds were originally delivered to John W. McKinnon. Just explain that, please.

*Mr. Faulks.* We object to this as immaterial and incompetent.

A The bonds were originally issued in temporary form.

Q You mean that all— A The entire issue of $3,000,000 of bonds were issued in temporary form, aggregating $3,000,000; one bond for $2,481,000 was delivered to the bondholders' committee, and the balance were delivered to John

*Charles H. Bowen, further cross.*

W. McKinnon; subsequently the temporary bonds delivered to McKinnon were surrendered by Ladenburg, Thalmann & Co. and the permanent bonds delivered to them in exchange therefor.

Q Are these numbers which are given for these $422,000 of bonds the numbers of the permanent bonds? A They are.

*Mr. English.* I offer in evidence the statement. There is no objection to the form of the proof?

*Mr. Faulks.* No, I have no objection to the form of the proof, but I object to the statement and the information contained in it, but only to the same extent that I would to the original books if they were produced; namely, that the information referred to is incompetent and of no materiality in this proceeding.

*Cross examination* by Mr. Faulks.

Q Were these bonds issued registered or bearer form? A Bearer form.

Q You only testified from recollection as to the bonds purchased for the sinking fund in November, 1912, and November, 1913, did you not? A Recollection as to absolute figures and absolute date, as to the facts of the purchase.

Q Were the bonds in 1912 all purchased from one holder? A Several holders.

Q What was the fact in that respect with reference to the bonds purchased in November, 1913? A They were all purchased from one source.

Q What source was that? A The Mercantile National Bank of New York.

Q And isn't it a fact, Mr. Bowen, that these bonds were held by that bank as collateral for some notes? A That I don't know.

Q Were any of the bonds that were bought for sinking fund purposes in November, 1912, bought from the Mercantile National Bank of New York? A Some of them were.

Q Do you know how many? A I cannot tell you without looking at the record.

Q Do you know whether or not those bonds were held as collateral for some note or notes? A I have no knowledge.

RUSSELL G. FESSENDEN, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A Boston.

Q Do you live in the State of New Jersey? A No.

Q You have been mentioned as president of the American Trust Company; you are president of that company? A I am.

Q And Mr. Bowen is the secretary? A He is.

Q It also appears that you are one of the bondholders committee of the Metropolitan Steamship Company of Maine, which subsequently went into the hands of receivers; that is correct? A Yes.

Q Who are your associates on that committee? A Mr. Oliver E. Williams of the firm of George A. Fernald & Co., and Mr. Murray, of the Hudson Navigation Company,—I cannot remember his initials now.

Q You are of course acquainted with the fact that the property was sold at receivers' sale? A I am.

Q And purchased by Mr. McKinnon? A It was purchased by the reorganization committee, I believe, by Mr. McKinnon acting for them.

Q And that was a separate committee from your committee? A Yes.

Q Did you have more or less correspondence with Mr. McKinnon, first, with reference to the reorganization of this company, and afterwards, with reference to other matters in connection with it? A I did.

Q I show you a letter dated November 16, 1909, apparently signed John W. McKinnon, addressed to you; did you receive that letter? A I did.

Q That related to the stage of the proceedings where the new company was being discussed which was to take over the property of the old company? A Yes.

*Mr. English.* I offer that letter in evidence.

(Marked Exhibit C. 84.)

*Mr. Ward.* I would like to enter the same general objection to the testimony of this witness as to materiality and relevancy, and ask that it apply to all his testimony.

*Mr. English.* That is satisfactory to me.

Q I notice that this letter, Exhibit C. 84, refers to the issuance by the Metropolitan Steamship Company of New Jersey of $3,000,000 of thirty-year 5 per cent. bonds, $500,000 two-year 5 per cent. gold notes, and $3,000,000 of common stock; do you know whether any change was afterwards made in that plan? A Yes, there was a change made.

Q What was the change which was made? A The holders of common stock were offered an opportunity to change their common stock for notes; I believe they were ten-year notes without interest.

Q Six per cent. notes? A That I don't remember. That was not a part of the plan; the plan was carried out as originally provided, but after the people had accepted the plan and their securities, they were given an opportunity to change, if they desired to do so.

Q That is, change common stock for ten-year notes? A Yes.

Q And were changes in fact made by any of the stockholders? A Yes, some of them did change.

Q Do you remember to what amounts? A No.

Q Are you acquainted with or did you meet in connection with this general matter, a Mr. Goodall? A I did.

Q I show you a carbon copy of a letter dated December 24, 1909, addressed to John W. McKinnon, is that a carbon copy of a letter written by you? A It is.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 85.)

*Mr. Faulks.* I object to this letter upon the ground that it is irrelevant, and incompetent, and that the matters referred to in it cannot be proved by such a letter, and on the further ground that it is not evidential as to parties to this suit or any of them.

Q Who is this Mr. Goodall who is mentioned in this letter, if you know? A I understood

he was a gentleman connected with navigation on the Pacific coast.

Q And in what connection did you have a conference with him which, according to your letter, occupied some time?

*Mr. Faulks.* Same objection.

A He came in to see me in regard to the possibility of buying the Harvard and Yale, as I remember it. He said if he could buy—

*Mr. Faulks.* I don't think you ought to say what Mr. Goodall said to you.

Q He came to see you about the Harvard and Yale; do you know why he called upon you in connection with the matter? A I think it was because we were trustees under the mortgage and he wanted to see if he could arrange about releases, etc.

Q Did he come to you from Mr. McKinnon, or don't you know? A I don't know.

Q I see in this same letter, Exhibit C. 85, you refer to Mr. Dimon; who was he? A Dimon was a man that had run the Joy Line in Boston and afterwards had run the Brunswick Steamship Company for Mr. Atkinson in connection with the Atlanta, Birmingham & Atlantic R. R.

Q I see also you mention a Mr. Mellen, who is he? A Mr. Mellen is the president of the New Haven Railroad.

Q Charles A. Mellen? A Yes.

Q What did you mean in this letter, Exhibit C. 85, when you wrote Mr. McKinnon that the employment of Mr. Dimon by him would be "rather a thorn in Mellen's flesh?"

*Mr. Faulks.* I object to that question as not only incompetent, but improper. The

letter must speak for itself, and whatever Mr. Fessenden may have meant has no relevancy in this case.

A Mr. Dimon, as I understood, was a very energetic and active business getter, and I thought that if he was put in charge of the Metropolitan freight boats, they might be more successful than they were under Mr. McKinnon's administration, and anything that helped them out in the line of getting freight, naturally cut into the New Haven Railroad, through its ownership of their boats and its own land transportation.

Q Was the New Haven Railroad through both its land and water lines a competitor of the Metropolitan company?

*Mr. Faulks.* I object to that as calling for a conclusion upon the part of the witness. I do not think that can be proved in that way, if at all, by this witness, who has not shown any qualifications to testify as to the matter at all.

A I supposed it was.

Q Are you familiar with the fact which has already been proved this morning, that there were releases given by your company as trustee of the lien of the mortgage on the freight boats belonging to the New Jersey Company, also the Union Wharf and also the India Wharf? A I am.

Q Did you have any part in the negotiations which led up to those releases? A I did.

Q Did you conduct any of the correspondence? A I believe I did.

Q And who, in connection with you, acted for your company in the matter? A Mr.

Bowen and Mr. Elmer P. Howe and Mr. W. A. Sargent, as attorneys for the bank.

Q Mr. Brown as secretary of the company? A Yes.

Q It already appears that valuations of those properties were made by Fletcher and Austin and also by Whittier, Eldredge and Russell for the Union Wharf? A Yes.

Q Do you also remember the fact which appeared in the testimony of Mr. Bowen this morning, that there was some correspondence about the bill of your company for the payment of their services in connection with these matters? A Yes.

Q Do you also remember the fact that appeared this morning, that some correspondence ensued with reference to any possible bill of Mr. Austin as an appraiser? A Yes, sir.

Q I show you a letter which is already in evidence as Exhibit C. 71, which was written by Mr. Bowen to Mr. E. D. Robbins, but it starts out by saying "Confirming conversation over the 'phone with our Mr. Fessenden today"; look at that and tell me if you recollect a conversation on the day of the date of that letter, which was June 27, 1910, with Mr. E. D. Robbins over the telephone?

*Mr. Faulks.* Please answer that question yes or no.

A No.

Q Can you remember from reading the letter? A I presume I did, but I don't remember it.

Q Do you remember any conversation with Mr. Robbins in connection with these affairs of the Metropolitan Steamship Company, of which your company was the trustee? A Yes.

Q When was the first one you recollect with Mr. Robbins with reference to the affairs of the Metropolitan Steamship Company of New Jersey?

*Mr. Faulks.* Objected to as immaterial, irrelevant and incompetent.

A I think it was sometime in the fall of 1910.

Q Apparently from that letter there must have been an earlier conversation? A I suppose I did have that conversation, but I don't remember it.

Q Can you recollect any conversation with Mr. Robbins over the telephone with reference to the payment of your company's bill? A No.

Q I show you a carbon copy of a letter addressed to Edward D. Robbins, 739 Main street, Hartford, Conn., under date of June 23, 1910, written by you as president of the American Trust Company; is that a copy of the letter which you wrote? A Yes.

Q Do you recall now having written that letter? A Yes.

*Mr. English.* I offer that letter in evidence.

(Marked Exhibit C. 86.)

*Mr. Faulks.* I object to this letter on the ground that it and its contents are irrelevant, immaterial and incompetent and not evidential against any of the defendants that we represent.

Q I observe that that last letter, Exhibit C. 86, was written by you in reply to a letter of a previous date; I show you a letter dated June 22, 1910, addressed to you and signed

Edward D. Robbins; did you receive that letter? A Yes.

Q And the letter C. 86 was written in reply to it? A Yes.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 87.)

Q Who is the Mr. Edward D. Robbins who wrote that letter; do you know him? A Yes.

Q What is his business or profession? A He is a lawyer.

Q Has he any connection with the New Haven Railroad, to your knowledge? A Now?

Q At that time? A He did at that time.

Q What was his connection at that time? A One of the counsel for the New Haven Railroad.

Q Please look at your letter, Exhibit C. 86, which I observe refers to a valuation of the wharf, and tell me what wharf was referred to? A Union Wharf.

Q That was one of the properties covered by the trust mortgage of the New Jersey company? A Yes, sir.

Q Did Mr. Robbins appear for the conference which was mentioned in that correspondence? A I don't really remember.

Q Do you remember that in connection with the release by your company of these various properties covered by the mortgage, you required certificates of the election of the directors of the Metropolitan Steamship Company of New Jersey? A Yes.

Q Have you any recollection of having written to Mr. Robbins for such certificates? A Yes.

Q I show you a letter dated July 5, 1910, addressed Edward D. Robbins; is that a carbon copy of a letter sent by you? A Yes.

*Mr. English.* I offer that letter in evidence.

(Marked Exhibit C. 88.)

*Mr. Faulks.* Same objection.

Q Why did you write to Mr. Robbins for the certificate of election of the directors of the Metropolitan Steamship Company of New Jersey?

*Mr. Faulks.* Same objection.

A He was handling the matter of the release of the Union Wharf from the mortgage.

Q Had you had any conference with him with reference to it prior to that date?

*Mr. Faulks.* Same objection.

A I don't remember it, personally.

Q It already appears you had some correspondence with him about it? A Yes.

Q In view of what has gone before, go back to Exhibit C. 71, which speaks of your phone conversation with Mr. Robbins; is you recollection about that refreshed or not? A I don't personally remember about the conversation; I suppose I must have talked to him.

Q Have you any recollection of ever having any occasion to either telephone or write letters with reference to the payment of your bill? A No, I have not. Can I see that last letter again, please? (After examining letter.) I will amend that and say that I do.

Q What is your recollection?

*Mr. Faulks.* Same objection.

A My recollection is not in regard to telephone but in regard to writing letters.

Q Do you remember to what effect you wrote letters? A Asking him to see that the charges of the attorneys and the experts should be paid.

Q Why did you write to Mr. Robbins with reference to that matter?

*Mr. Faulks.* Same objection.

A Because he had charge of the negotiations in regard to the release of the Union Wharf.

Q Did he ever offer to see to it that your charges were paid? A I believe he did.

Q He made that offer to you personally? A He did not make it to me personally.

Q Do you know to whom he did make the offer?

*Mr. Faulks.* It already appears that the witness has no personal knowledge on the subject, and I therefore object upon the ground that the question necessarily calls for hearsay evidence.

A Mr. Bowen.

*Mr. Faulks.* You only know what Mr. Bowen told you about it?

*Witness.* Yes.

Q Do you recollect that your company desired a statement from Mr. Calvin Austin with reference to whether or not he had a charge for making the appraisals which he did make? A Yes.

Q I show you a letter which is already in evidence as Exhibit C. 81, addressed to you by Calvin Austin; do you remember receiving that letter? A Yes.

Q It has attached to it an original letter from Mr. Robbins to Mr. Austin, which is marked C. 82, and also a letter from Mr. Douglas Nicholson to Mr. Warren D. Chase, which is marked C. 83; do you remember that they were attached to the original which you received? A Yes.

Q Have you any recollection of personally having seen the letter which is marked C. 80, and which was addressed by Douglas Nicholson, treasurer, to the American Trust Company, under date of August 3, 1910? A No, I don't think I have.

Q That was produced by Mr. Bowen from the files of the company? A I don't remember having seen that.

Q Did Mr. Austin ever explain to you why he failed to make any charge? A No.

Q When do you recollect having personally had a conversation with Mr. Robbins in connection with this Metropolitan Steamship Company matter—of New Jersey? A In the fall of 1910.

Q Had you ever had any conversation with him with reference to the earlier Metropolitan company of Maine, which went into the hands of a receiver? A I don't remember it.

Q Where was the conference between you and Mr. Robbins held in the fall of 1910? A In the American Trust Company's office in Boston.

Q I show you a letter addressed by you as president to Mr. E. D. Robbins, c/o N. Y., N. H. & H. R. R., New Haven, Conn., under date of October 8, 1910, and ask you if you wrote that letter? A I did.

*Mr. English.* I offer the letter in evidence.

(Marked Exhibit C. 89.)

*Mr. Faulks.* I make the same objection.

Q Did you receive a reply to that letter from Mr. Robbins, under date of October 12, 1910? A Yes, I did.

Q Is that the letter which I show you? A Yes.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 90.)

*Mr. Faulks.* Same objection.

*Mr. Ward.* I make the additional objection that the letter was written after the lease was executed and delivered to the defendant, Pacific Navigation Company.

*Mr. English.* It has nothing to do with the lease matter.

Q Did you reply to Mr. Robbins' last letter, under date of October 13, 1910? A Yes.

Q Is that a carbon of your letter, which I show you? A Yes.

*Mr. English.* I offer that in evidence.

(Marked Exhibit C. 91.)

*Mr. Ward.* Same objection.

*Mr. Faulks.* Same objection.

Q Was it following that correspondence that you had the conversation with Mr. Robbins at your office that you mentioned a moment ago? A Yes.

Q Before I go to that, I show you a letter written on the letter paper of the Metropolitan Steamship Company, India Wharf, Boston, dated October 13, 1910, addressed to you and signed blank president, to which is attached a copy of a letter which was addressed to you under date of August 10, 1910, and which is already in evidence as Exhibit C. 81. Look at that letter and

tell me if you received that letter from Mr. Austin? A Yes.

Q Apparently, Mr. Austin forgot to sign his letter? A Yes.

*Mr. English.* I offer in evidence the unsigned letter of October 13, 1910, which has attached to it the letter already in evidence as Exhibit C. 81.

(Marked Exhibit C. 92.)

*Mr. Faulks.* This being a letter from Mr. Austin as president of the Metropolitan Steamship Company to the witness?

*Mr. English.* That is my understanding.

*Mr. Ward.* Which company?

*Mr. English.* It speaks for itself.

*Mr. Faulks.* Same objection.

Q At the suggestion of counsel on the other side, I ask you if you know what Metropolitan Steamship Company is referred to in this Exhibit C. 92? A Metropolitan Steamship Company of Maine.

*Mr. Faulks.* When you say "referred to," you mean Mr. Austin wrote that letter as the president of the Metropolitan Steamship Company of Maine No. 2?

*Mr. English.* Yes.

Q We have now gotten up to the conference between you and Mr. Robbins at the office of the American Trust Company; who was present besides yourself and Mr. Robbins, if any one? A Nobody else.

Q And what was the object of that conference which you sought?

*Mr. Faulks.* Objected to as irrelevant and incompetent and not binding upon any

of the defendants whom we represent, and as being hearsay evidence.

*Mr. Ward.* Same objection and the further objection that the conference took place after the lease to the defendant Pacific Navigation Company had been executed and delivered, and therefore not evidential as against them.

Q Before answering that question I ask you to look at Exhibit C. 89, and see if that will refresh your recollection? A It was in regard to the sending of the Harvard and Yale around to the Pacific coast.

Q What were the Harvard and Yale that you refer to? A The Yale and Harvard were the two passenger boats owned by the Metropolitan Steamship Company of New Jersey.

Q And were a part of the mortgaged premises of which your company was trustee? A They were.

Q How did it come to your knowledge that it was proposed to send those two ships to the Pacific coast?

*Mr. Faulks.* Objected to as immaterial.

A Some of the bondholders had heard about it and told me about it.

Q Can you remember the names of any of the bondholders that called it to your attention? A I should say Mr. Fernald had; I don't remember anyone else.

Q Do you know what amount of bonds or holdings Mr. Fernald represented?

*Mr. Faulks.* What do you mean by "represented?"

*Mr. English.* Owned or represented.

*Mr. Faulks.* Objected to as immaterial.

A He owned about $700,000, and through bonds that he had sold to clients he might be said to have represented substantially the same amount over again, I should think.

Q What is Mr. Fernald's business? A Bond broker, banking house, George A. Fernald & Co.

Q So that following the protest of Mr. Fernald to you, you asked Mr. Robbins to call?

*Mr. Faulks.* I object to that question as not being based on anything that so far appears in the evidence.

A Yes.

Q What was the conversation between you and Mr. Robbins in reference to the sending of those ships to the Pacific coast?

*Mr. Ward.* Won't you try and fix the date as nearly as possible?

*Mr. English.* It already appears in the correspondence it was in October, 1910.

Q Can you remember the exact date of that conference? A The day after the Harvard and Yale sailed for the Pacific coast, if you remember when that was.

*Mr. Faulks.* It appears by the evidence that it was October 16, or about that date.

*Mr. English.* The correspondence shows it took place in October, 1910, as you recollect?

*Witness.* As I recollect.

*Mr. Faulks.* It was subsequent to the letters of October 12 and 13 between the witness and Mr. Robbins?

*Mr. English.* Yes.

*Mr. Faulks.* I want to object to the witness relating this conversation with Mr. Robbins, on the ground that it is clearly incompetent and cannot constitute evidence against any of the defendants whom we represent, and in any event it is only hearsay testimony.

*Mr. Ward.* Same objection and the further objection that it took place after the Pacific Navigation Company acquired an interest in these vessels and is therefore not evidential against them.

Q You may answer and tell what conversation was had between you and Mr. Robbins.

A I told Mr. Robbins that quite a lot of the bondholders were very much disturbed at the idea of the Harvard and Yale being sent to the Pacific coast, that they thought they were better off here; they objected to losing their identity on the eastern coast, and I told him that if I could explain to them what the plans of the Metropolitan Steamship Company was about chartering them or running them, so that I could explain that to the bondholders, it might satisfy them, as I was rather fearful that possibly we might have injunctions brought against us to try to restrain the boats going around, or getting into legal complications, which I wanted to avoid, if possible.

Q Anything else said by you?

*Mr. Faulks.* Same objection, of course, to this entire line.

A I asked him other questions about the make-up of the company that was chartering the boats; he explained to me the capitalization and what they had expected to spend to get

them around the Cape, what working capital it would leave the new company, the operating company, and told me he thought it was very advantageous to have them at the Pacific coast rather than on the Atlantic coast; he thought they could make more money.

Q Did he tell you the name of the company which was to operate them on the Pacific coast? A I have forgotten whether he did or not.

Q Did he tell you how much it was going to cost to fit them up to go around there? A He told me that there had been $250,000 paid-up capital, and to send them around and the insurance during their voyage was about $150,000, as I remember it, being about $100,000 working capital when they got around there. He told me that the charter provided for the payment of the interest on our bonds, sinking fund money, insurance, upkeep, and he suggested, I believe, that we could have them inspected once a year, and report made to us by any man we wanted to.

Q So he seemed thoroughly familiar with the whole arrangement? A Yes.

Q Did you when this matter first came to your attention through Mr. Fernald go to any of the officers of the Metropolitan Steamship Company of New Jersey? A I don't think I did.

Q Why did you go to Mr. Robbins?

*Mr. Faulks.* I object to that as immaterial, irrelevant and incompetent.

A The Metropolitan Steamship Company of Maine had been operating under lease, I understood, during the summer, and Mr. Robbins had appeared in connection with the Union

Wharf lease, and I thought I could get the information out of him.

Q And you did get the information from him? A I did.

Q Did you have more than the one conversation with him with reference to the matter? A I think that was the only one; as a matter of fact there wasn't much of any conversation, because the boats had already sailed.

Q Have you any personal knowledge as to whether during the summer of 1910 the boats had operated between New York and Boston? A Yes.

Q Did you sail on them? A No.

Q Did you see them come into the dock at Boston? A I saw the advertisements.

*Mr. Faulks.* That is not questioned; it is abundantly proved already.

Q Did you ever have more than the one conversation of October with Mr. Robbins about this matter, that you recollect? A I have already answered that question.

*Cross examination* by Mr. Faulks.

Q Why did the American Trust Company choose Mr. Calvin Austin and Mr. Fletcher to appraise the boats in the spring of 1910? A Mr. Fletcher, we understood, had built some of the boats and he had been brought to our attention more or less in the litigation over the reorganization of the old company, where he had certain liens, and I understood he had a good reputation, and thought he would be impartial. In regard to Mr. Austin, we knew Mr. Austin had had a great deal of experience with that particular line of boats, not so much from the building point of view as the operating

point of view, and we thought that he would make a good appraiser for that reason.

Q Were you able to find any men that were more competent to appraise those particular boats than Mr. Austin and Mr. Fletcher? A I might have, if I tried hard; they seemed good enough to us.

Q Who do you think would have known more about the value of those boats than those gentlemen? A I don't think of any one now.

Q Hadn't Mr. Fletcher's concern constructed a number of the boats? A Yes, sir.

Q And hadn't Mr. Austin been engaged in the operating part of the steamship business on the eastern coast between Maine and New York for a great number of years? A He had.

Q Is there any man that you know of that knows more about the operating of boats in that territory than Mr. Austin? A No.

Q So far as you knew, or then had any reason to believe, was there any doubt but what those gentlemen would make a fair and honest appraisal of the value of the boats? A Not the slightest.

Q Why were Messrs. Russell, Whittier and Eldredge selected to appraise the Union Wharf property? A Mr. Russell probably knew more about property, or had had more experience in wharf property than any other man in Boston; he is treasurer of the Boston Wharf Company, which owns a great deal of wharf property in South Boston, and he had connection with other property; he had been connected with the Boston Real Estate Exchange for quite a number of years. Mr. C. W. Whittier was one of the leading real estate men, as he is now, of Boston; he has handled a great many

large properties, and incidentally was one of our directors. Mr. Eldredge, who was a former partner of mine, is also one of the leading real estate men in town.

Q Do you know of any men who were better qualified to appraise the property? A No; I should have gotten them, if I had.

Q Do you know whether any other appraisals were made or not of either the ships or the Union Wharf property? A I have some bills; it appears that Mr. Austin sent in an appraisal of a wharf, but he was never asked to do it. I seem to remember that.

Q You don't know of any appraisal having been made by Mr. McKinnon or any of his associates, or at their direction? A No.

Q Either Mr. McKinnon or Mr. Carrington has already testified in this case, I think, to the effect that he recollected that they had had an appraisal made by Mr. McGregor, who was connected with the Metropolitan Steamship Company, during the latter part of the year 1909 and the early part of the year 1910. If one was made by Mr. McGregor, it did not come to your attention? A I don't remember it.

Q Have you given us all of the conversation which took place between you and Mr. Robbins in the fall of 1910 that you can remember? A There were other things turned up: I don't know as they are material. He explained that he had no connection with the transaction of sending the boats to the Pacific coast other than it was owing to the fact that he was connected with the Metropolitan Steamship Company of Maine, which had leased the boats, and he wanted to see that they got out

of his hands in good shape and got well started around the Cape. He further said that he happened to be in Mr. Mellen's office a little while before, I think, and I think he said the traffic manager was with him there, and Mr. Mellen and the traffic manager both had experience on the Pacific coast in navigation transportation; they both thought the boats would do very well out on the Pacific coast; I asked him if there was any way of our getting figures of the earnings of the boats while out on the Pacific coast, as it might affect the bondholders: it might give them a line on how valuable their property was and what it was earning. He said he didn't see how we could get that, and I told him that it was a little hard on the bondholders and he seemed to think it was.

Q Did he say anything more than you have already told us, about the ability of the boats to make more money out there than they could in the East? A I don't think he went into figures, if that is what you mean.

Q Yes. A I don't remember.

Q What if anything more than you have already told us, did he have to say about the Pacific Navigation Company? A I don't remember anything further than the capitalization which I have already explained, and how the money was to be spent, the cost of getting the boats around the Cape; the outline of the charter party or charter agreement; I don't remember whether he told me who was to operate the boats out on the Pacific coast or not.

Q Did he say anything as to where the working capital of the Pacific Navigation Company had come from? A I don't know what

he said, but he left the impression on my mind it had been raised on the Pacific coast.

Q Did he give you all of the information that you desired with reference to the terms of the indenture or agreement under which the boats were to be operated by the Pacific Navigation Company? A Yes, he told me the outline of the lease.

*Mr. Ward.* No cross examination.

*Re-direct* by Mr. English.

Q After your conference with Mr. Robbins in October of 1910, were you kept informed as to the facts with reference to the Harvard and Yale out on the Pacific coast?

*Mr. Faulks.* Don't that call for a conclusion on the part of the witness? I object to it on that ground. I have no objection as to anything that has been done or has not been done.

Q When did you next get any information with reference to the condition of the Harvard and Yale out on the Pacific coast? A The report that we had made for ourselves by Mr. Hough, engineer on the Pacific coast.

Q That was made in 1913? A I should say 1912; we had one made every year.

Q Beginning when? A Beginning about a year after the boats went out, as I remember. Mr. Nicholson has asked for those copies.

*Mr. Nicholson.* They are in evidence.

Q The information which you got from surveys made by Mr. Hough on the Pacific coast is your sole source of information? A Except what I saw myself. I happened to be out there two years ago.

Q Did you try to get any information with reference to those ships prior to that you got from Mr. Hough? A I don't think so.

Q When it came to your attention that they were about to be sent to the Pacific coast, have you any recollection whether you saw Mr. Nicholson in the matter? A No, I have not.

Q Either in Boston or in New York? A I don't remember it.

Q Did you ever apply to Mr. Nicholson for any information with reference to the Metropolitan Steamship Company of New Jersey? A Yes.

Q When was that? A Within about three or four months, I should think.

Q And where was it, in his office in New York; what information did you try to get from him with reference to the Metropolitan Steamship Company of New Jersey? A I asked for a copy of the lease of the Pacific Navigation Company, which he sent us.

Q Did you ask him for anything else? A We asked him if we could arrange to get a transcript of this testimony here.

Q Anything else; any other information you applied for? A I don't remember anything else; we had a general talk about the situation.

Q Can you tell us what that conversation was, or that general talk?

*Mr. Faulks.* This is three or four months ago?

*Mr. English.* Yes, but with the secretary of the defendant.

*Mr. Faulks.* Mr. Nicholson is not an officer of the company and hasn't been for two years.

Q I think it appeared this morning, on Mr. Brown's testimony, that your company was the trustee for the Metropolitan Steamship Company of Maine No. 1? A Yes.

Q So that for how many years have you been familiar with the general Metropolitan companies, regardless of the particular corporation? A I personally, simply since I became president of the American Trust Company in 1907.

Q Your personal recollection goes back to 1907? A Yes.

Q In 1907 did the Metropolitan Company of Maine, No. 1, operate the Harvard and Yale? A I don't remember if it was 1907 or 1908 when they first went on.

Q Did you know the company in the days when it was owned by Mr. Whitney? A By hearsay.

Q At the time the New Jersey company was incorporated bonds of the Maine Company No. 1 were exchanged for bonds of the New Jersey company at par, Mr. Bowen testified; do you remember that fact? A Yes, and stock for accrued interest, I think.

Q The accrued interest was stock? A Stock of the company, I think.

Q You are, of course, familiar with the trust mortgage of November 15, 1909, of the New Jersey company? A Yes.

Q Which your company is trustee on? A Yes.

Q Has your company ever advertised for bonds pursuant to Article 3 of that mortgage, which deals with the sinking fund? A Yes.

Q That article three gives you the right to purchase bonds in the open market? A Yes.

Q When did you first advertise for bonds under that article, last November? A No, I think—I don't remember whether we advertised twice or three times; I should say a year ago November, but it may be two years ago November; I don't remember.

Q The mortgage starts with November, 1912, so it must have been a year ago last November when you first began; did you advertise last November, 1913? A Yes.

Q Did you get any offers from the bondholders? A Yes.

Q Do you remember at what price?

*Mr. Faulks.* Objected to as immaterial and irrelevant and incompetent.

A I cannot remember exactly; about seventy-five, I should say.

Q As high as that? A I don't remember the details of it.

Q You do remember that you did advertise? A Yes, that is my recollection of it.

Q You got some bonds turned in? A Yes.

Q When you had your conference with Mr. Robbins in which he mentioned a conversation with Mr. Mellen and the traffic manager, did you learn what the name of the traffic manager was? A I suppose he mentioned the name, but I have forgotten it.

Q And the Mr. Mellen you speak of is Charles A. Mellen, the president of the New Haven road? A Yes.

Q Have you any knowledge of the operation of the Harvard and Yale between New York and Boston by the old Maine Company No. 1? A I don't remember the figures; I have studied them in the past, but I have really forgotten them.

*Russell G. Fessenden, re-cross.*

Q Do you know anything about the situation when the boats were operated by the receivers? A My recollection is that they made money that year.

Q They made money when they were run by the receivers? A That is my recollection.

Q You, as a member of the bondholders' committee, were more or less in touch with that situation? A Yes.

Q Have you figures that bear on that now? A I did have a report of the receivers; I thought it was turned over to you among the other papers, but I wouldn't be sure.

Q How long did that receivership last, do you know? A My recollection is from the early part of 1908 or the latter part of 1907 until the fall of 1909, but I wouldn't be sure.

*Re-cross* by Mr. Faulks.

Q Mr. Fessenden, it is a fact, is it not, that the interest and installments have always been paid promptly under this trust mortgage of November 15, 1909? A Yes.

Q Has the Metropolitan Company of New Jersey ever declined or refused to give you or your company any information that it has ever requested; I mean about its affairs or property or its business? A My impression is there were some questions we asked—I cannot remember what they are now; I should want to refresh my memory on that.

Q Do you remember of whom they were asked? A Mr. Nicholson.

Q Do you remember when they were asked? A Sometime in the latter part of the year.

Q Last year? A No, sometime this year.

Q You wrote a letter? A Yes.

Q And to which you think you received no reply? A I received a reply, but I am under the impression it was a question as to whether he thought we ought to have the information or not. It slipped my mind; it was nothing particularly important.

GEORGE A. FERNALD, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A Winchester, Massachusetts.

Q Are you a resident of the State of New Jersey? A I am not.

Q What is your business? A Banker.

Q Doing business under what name? A George A. Fernald & Co. I have one partner, named Oliver E. Williams.

Q And your office is here, 67 Milk street, Boston? A Yes.

Q Were you a bondholder of the Metropolitan Steamship Company of Maine, No. 1, which actually went into the hand of the receivers? A The receivers?

Q Yes. A I purchased a million bonds of that company at the time they were issued.

Q Maine No. 1? A Yes.

Q Did your firm hold them or did you buy them for customers? A We bought them to distribute to customers in the usual way.

Q And at the time of the receivership of that company, did you hold those same bonds? A We held some of them, and customers held the rest of them; I don't remember how they were distributed.

Q Did you have a substantial bondholding interest at the time of the receivership? A Yes.

Q Did you, pursuant to the plan of the reorganization, exchange your bonds in amount, number and nature for bonds of the Metropolitan Company of New Jersey? A I did, and recommended our customers also.

Q So that between what you exchanged and what your customers exchanged, that million dollar purchase was exchanged? A Yes.

Q In addition to that original purchase which you then exchanged, did you buy any new bonds outright of the New Jersey company? A Yes.

Q To what amount? A $700,000.

Q Do you hold those at the present time? A A large amount of them.

Q When you say "I," you mean your firm or you personally? A The firm.

Q Are you or your firm a stockholder of the Metropolitan Steamship Company of New Jersey? A Yes.

Q Which; you or your firm? A The firm.

Q And what is the extent of your stockholdings at the present time? A I would have to look that up; I know we own fifty-four shares in one certificate.

Q Is that your recollection, fifty-four? A Fifty-three or fifty-four shares.

Q How long have you held that stock, approximately, or any stock? A It was taken in the adjustment between the old company and the new company, covering the one year's interest between the old company and the new.

*Mr. Faulks.* Taken in payment of the accrued interest on the bonds of the old company?

*Witness.* Yes, to cover that year.

Q I suppose the books will show when you became a stockholder of record in that way? A Yes, I haven't it in mind.

Q Did you as a stockholder of record ever receive any notices of any stockholders' meetings? A Never.

Q Did you ever give any proxies for any stockholders meetings? A Never.

Q Did you as a bondholder acquire knowledge of the fact that in the spring and summer of 1910 the freight boats and the Union Wharf and the India Wharf were released from the lien of the trust company mortgage which secured your bonds?

*Mr. Faulks.* Objected to as immaterial.

A The India Wharf wasn't in it.

Q The lease of the India Wharf? A I didn't know as to that, but I know of the surrender; I knew as well as one can know that does not do it themselves, that $650,000 bonds were surrendered and the freight boats—the original purchase, the freight boats, transports were surrendered from the mortgage; that is, on the surrender of those bonds, they were released from the mortgage.

Q What about the Union Wharf? A And later $350,000 more bonds were surrendered, and which covered the equity, and they released the equity in Union Wharf.

Q Did you make any objection to that procedure after you learned about it? A Not formal protest.

Q You mean you didn't file any written protest? A Yes.

Q Whom did you see in the matter at all? A My impression is I saw the president of the American Trust Company, Mr. Fessenden.

Q Did you ever see anybody else in the matter with reference to the release of these properties? A I cannot say that I did positively.

Q Did you ever acquire knowledge of the fact that the steamships Harvard and Yale were about to be or were sent to the Pacific coast? A In the late summer or early fall, I should say, I learned in some way they were getting them ready to send.

Q What year was that? A 1910.

Q You learned that who were getting them ready to send? A I understood that directions were given to Calvin Austin to prepare them for a trip around the Horn.

Q Did you learn who gave the directions to Calvin Austin?

*Mr. Faulks.* I object to your asking whether he learned something, until it appears whom he secured his information from.

Q How did you learn that directions had been given to Calvin Austin to get these ships ready? A I should say from him, from Mr. Austin.

Q What did he tell you?

*Mr. Faulks.* Objected to as incompetent and immaterial.

*Mr. Ward.* Same objection.

A As I remember, he told me that he was instructed to get those boats ready to go around the Horn to the Pacific coast.

Q And what did the getting ready consist of?

*Mr. Faulks.* What did Mr. Austin tell him? I make the same objection.

Q Or if you know otherwise, what did the getting ready consist of? Do you know? A No.

Q What did he term the getting ready consisted of? A I don't know as I questioned him as to that.

Q What company or companies was Mr. Austin connected with at the time of that conversation, if you know? A The Eastern Steamship Company.

Q Do you know whether he was an officer of the Metropolitan Steamship Company of Maine No. 2? A I do not.

Q When was this conversation between you and Mr. Austin had? A I should say probably in September of 1910.

Q Did Mr. Austin tell you who had instructed him to get these ships ready?

*Mr. Faulks.* Same objection.

A I think he did, but I wouldn't swear positively—he told me that he had instructions from Mr. Robbins.

Q Who is Mr. Robbins? A Mr. Robbins was the general counsel, I believe, of the New Haven Railroad.

Q Edward D. Robbins? A Edward D. Robbins.

Q Having that information, did you have any correspondence or negotiations with Mr. Robbins? A I met Mr. Robbins at the Eastern Steamship Company.

Q Where, in Boston? A Yes, in Boston, at their office there.

Q When did you meet him? A Sometime in October.

Q After the conversation with Mr. Austin? A After I had learned that they were to be

sent away, that instructions were given to prepare them for the trip around the Horn.

Q Did you meet Mr. Robbins casually or seek him out? A I sought him out.

Q You made it your business to see him, A Yes, I did.

Q What did you say to him with reference to sending the Harvard and Yale to the Pacific Coast?

*Mr. Faulks.* Same objection.

A I said it would be a harm to me and it would be very disturbing to the bondholders to have their property taken so far away.

Q What else did you say to him, if anything? A He spent quite a long time trying to convince me it was a good thing to take them there.

Q Did he give you anything in writing to indicate his attitude on the matter? A I asked him what I could say to the bondholders; that is, it would be very disturbing to the bondholders to see that they were going to be taken away; I said, "What can I say to the bondholders," when I found he persisted in the idea of taking them away, I asked him what I could say to the bondholders to appease them—that is, their anxiety, and he said, "Say so and so," and they would operate the year around and operate out there, and they would operate with oil, and the oil would cost less there than here, and before we got through, I said, "I cannot remember just how you put that, I wish you would write it out," and he wrote it out.

Q Have you the original writing which he gave you at that time? A I have.

Q Will you please produce it? A Unless I have lost it within a few minutes. (Producing same.) There it is in the handwriting; there is

a copy of it (indicating); I made a copy so you can read it.

Q This yellow sheet in manuscript is his original handwriting? A I saw him write that.

Q And this typewritten sheet is a copy? A An exact copy.

Q You haven't examined it to see if it is a copy? A Yes.

*Mr. English.* I offer in evidence the paper produced by Mr. Fernald.

(Marked Exhibit C. 95.)

It is stipulated that a copy produced by the witness may be used in lieu of the original, with the same force and effect as the original.

*Mr. Faulks.* I make the same objection.

Q Do you know the date when this was given to you by Mr. Robbins; did you make a note of it? A Not exactly; I should say it was perhaps three or four weeks before the boats were sent away.

Q It was in October, 1910? A Yes.

Q I notice this statement of Mr. Robbins says that the Harvard and Yale had an excellent season; did he give you any figures to indicate what that excellent season represented in dollars and cents? A No.

Q Did you have any further or subsequent conference with Mr. Robbins with reference to the Harvard and Yale? A I don't think I did prior to their being sent away.

Q What about after they were sent away? A I made inquiries of him occasionally to find out how they were doing or on what terms they had been sent away, but I was unable to learn anything from him definitely, any more than I think

every time I saw him he said they were doing well.

Q Did you make any efforts to find out from anybody else besides Mr. Robbins what or how they were doing? A I was in New Haven once and called upon Mr. Mellen.

Q Who was he? A He was then president of the New York, New Haven & Hartford Railroad.

Q Why did you call on him?

*Mr. Faulks.* We object to that as immaterial and incompetent.

A Because I considered that this was a New York, New Haven & Hartford Railroad matter, and that he would know, the same as Mr. Robbins, all about it.

Q Did you get any information as a result of that interview with Mellen?

*Mr. Faulks.* I object to that upon the ground that that calls for a conclusion on the part of the witness, and on the ground that any information that he may have secured from Mr. Mellen would not be competent evidence in this case and not binding upon the defendants that we represent.

*Mr. Ward.* I object to any testimony as to what Mr. Mellen said, because it appears that this interview took place after the lease was made to the Pacific Navigation Company.

Q Did you make any other efforts to get in touch with either Mellen or Mr. Robbins in this matter at any time, either before the ships went or after they went? A I called Mr. Mellen on the phone.

Q When was that? A That was within a few days of my interview with Mr. Robbins, I should say.

Q Before the ships sailed? A Yes, before the ships sailed.

Q You called him for the same reason that you afterwards visited him in New Haven? A Yes.

Q What did you tell him over the telephone?

*Mr. Faulks.* We object to this on the ground that anything that Mr. Fernald may have said to Mr. Mellen, or that Mr. Mellen may have said to Mr. Fernald, is incompetent, and not binding upon the defendants that we represent.

*Mr. Ward.* Same objection.

Q Did you ever consult any Boston lawyers or seek the help of any Boston lawyers in the matter?

*Mr. Ward.* Objected to as immaterial, irrelevant and incompetent.

*Mr. Faulks.* Same objection.

A I told one of my customers, who owned a considerable amount of the bonds, of the situation, after my interview with Mr. Robbins, and he suggested that we call upon Richard Olney.

Q Of the Boston bar? A Yes.

Q Did you call on Mr. Olney? A I did.

Q What did Mr. Olney do?

*Mr. Faulks.* Same objection to this line of testimony.

*Mr. Ward.* Fix the date, if possible.

Q When was this interview with Mr. Olney? A Within a few days of the time I talked with Mr. Robbins at the Eastern Steamship Company's office.

*George A. Fernald, direct.*

Q And before the ships sailed? A Yes.

Q What did Mr. Olney do as a result of your interview with him? A I started to tell the story of what was going on, and he said, "Here, do you know my connection with the New Haven Railroad—Boston & Maine, and the Trust Company?" I said, "Yes, but what I have got to say is an open book;" then he told me to go on, and I told him that they were planning to take the Harvard and Yale and send them away to the Pacific coast, and I objected to, that it would be a great harm to me, and finally he called Mr. Robbins in New Haven on the telephone.

Q While you were in the room? A While I was in the room.

Q Did you hear what he said to Mr. Robbins?

*Mr. Faulks.* Same objection.

A I cannot remember what he said to him, but it resulted in Robbins saying—

*Mr. Faulks.* I object.

Q Could you hear what Robbins said to him? A No, I could not.

Q Did he tell you what Robbins said? A Yes; I cannot say that he told me all that was said.

Q Did he purport to tell you some of the things that Mr. Robbins said? A Yes.

Q As a result of that conversation what did you do with reference to this matter? A The following day I went to Hartford to meet Mr. Robbins again.

Q Was that the result of your conversation with Mr. Olney? A Yes.

Q Where did you meet Mr. Robbins at Hartford?

*Mr. Faulks.* Objected to as immaterial.

A State House in Hartford.

Q What conversation took place between you and him at the State House in Hartford?

*Mr. Faulks.* Same objection as I made to the previous conversation between the witness and Mr. Robbins, which occurred, he says, at the office of the Eastern Steamship Company.

A I made the same protest that I made when I met him at the Eastern Steamship Company office, and after a long conversation—he spent a great deal of time trying to convince me, as before, "it is a good thing to let those boats go to the Pacific coast;" that is all it amounted to.

Q Did you have any other interviews with Mr. Robbins personally in reference to this matter about the time of the sailing of the ships, either before or after? A I don't think so, about that time.

Q After the ships got out to the Pacific coast, did you in April, 1911, address a letter to Mr. Robbins, and I show you a carbon copy of a letter dated April 28, 1911, addressed Edward D. Robbins? A I did.

Q Did you get a reply to that letter? A I did.

Q I show you a letter signed Edward D. Robbins, on the letter paper of the New York, New Haven & Hartford Railroad, addressed to you and dated May 1, 1911; is that the letter you received in reply? A It is.

Q I see pinned to that a little newspaper clipping; is that the newspaper clipping which is referred to in your letter of April 28, 1911? A Yes.

*Mr. English.* I offer in evidence the letter of April 28, 1911, from Mr. Fernald to Mr. Robbins.

(Marked Exhibit C. 96.)

Also, the letter of Mr. Robbins in reply, dated May 1, 1911, to which is pinned the newspaper clipping referred to, which I include as a part of the offer.

(Marked Exhibit C. 97.)

*Mr. Ward.* Same objection for reasons heretofore stated.

*Mr. Faulks.* Same objection.

Q As a result of that correspondence last put in evidence, did you have any personal interviews with Mr. Robbins? A I wrote him once.

Q Did you have any personal interviews with him? A He came to my office once in response to a letter to him, saying I would like to see him sometime when he was in Boston, and I don't think he replied, but called in a short time, but it was after the boats left, when they were out there. It might have been some time after they were there.

Q Do you know Mr. Douglas Nicholson, the gentleman here with Mr. Faulks? A I was in his office in New York.

Q When? A I should say about three weeks before those boats were sent away.

Q That was when he was an officer? A I went to see him as treasurer.

Q He was then treasurer of the New Jersey company, the defendant company? A Yes, I was told so by Mr. Robbins, and called on him.

Q Mr. Robbins told you he was the treasurer? A Yes, as I remember.

Q That is why you went to see him? A Yes.

Q What was the object of your visit to Mr. Nicholson? A I wanted to find out more particularly about the plans of sending those boats away.

Q Was that before the boats had sailed? A Yes.

Q That was in the fall of 1910? A Yes.

Q Who was present at that interview between you and Mr. Nicholson? A I think his partner was in the adjoining room. No one was in the room with us at the time I talked with him.

Q That took place in his office whereabouts? A In New York, where it is now.

Q What did you say to Mr. Nicholson and what did he say to you about the transfer of the Harvard and Yale to the Pacific coast? A When I spoke of that, that I understood they were going to be sent to the Pacific coast, he gave me to understand he didn't know anything about it, that such was the plan.

Q How did he give you to understand that? A By telling me so.

Q What did he say as near as you can remember; think back and tell us what he said to you and what you said to him, and the words that were used as near as you can remember? A I said to him I understood that these boats would be sent to the Pacific coast.

Q Did you tell him from whom you understood that? A I don't think I did.

Q What did he say or you say further? A I should say he said that he didn't know that that was the plan, that they were going to be sent away.

Q What else did you say to him? A I cannot remember.

Q Was that after you had had that conversation with Mr. Robbins at the dock of the Eastern Steamship Company? A I should say yes, as near as I can remember.

Q What else did he say to you apart from the fact that he didn't know anything about it? A It was a rather brief conversation; I don't remember anything more about the conversation.

*Cross examination* by Mr. Faulks.

Q Mr. Fernald, can you give us the dates of any of those interviews you say you had with Mr. Robbins, any more definitely than you have done on your direct examination? A I am not sure that I can.

Q You don't think you can? A I don't know if we kept our telephone records; I might tell from that whether we called certain parties that day.

Q You have no way of refreshing your recollection now? A No.

Q Can you fix the date of your conversation with Mr. Nicholson at his office in New York any more definitely than you have heretofore done, namely, that you think it was three or four weeks before the boats sailed? A I am quite sure it was about three weeks, but I am not absolutely positive. I think I could look the matter up and learn when I went to Hartford to meet Mr. Robbins positively from the expense account of the office.

Q Did you have more than one interview with Mr. Nicholson? A I don't think so; I don't remember that I had more than one.

*George A. Fernald, further direct.*

Q Did you write any letters to Mr. Nicholson, except perhaps by way of arranging this appointment, any letters about the boats going out there? A I think not, no; I didn't meet him by appointment, as I remember, I just went to his office and found him there.

Q You have no recollection of having written him any letters? A Oh, no, but my files would show that; I didn't take pains to look.

Q Did you write to any of the other officers of the company? A I think I wrote several letters for information one time and another; I wouldn't say positively until looked at my files to see whether I have.

It is stipulated and agreed that no objection shall be made to the testimony taken pursuant to the notice, on Friday, the tenth day of April, 1914, which is commonly known as Good Friday, because of fact that that is a legal holiday in New Jersey.

Adjourned to Friday, April 10th, 1914, at 9:30 A. M., at the same place.

Continuation of depositions in the above entitled cause, taken pursuant to adjournment, before Nicholas W. Bindseil, Esquire, a Master in Chancery of New Jersey, at the Library of the Boston Bar Association, Federal Building, Post Office Square, Boston, Massachusetts, on Friday, April 10th, 1914, at 9:30 A. M.

GEORGE A. FERNALD, recalled for further

*Direct examination* by Mr. English.

Q In your testimony yesterday you stated that you originally purchased a million dollars of the bonds of the Metropolitan Steamship

Company of Maine, No. 1, and that after the organization of the Metropolitan Steamship of New Jersey, the defendant company here, you exchanged those bonds of the Maine Company No. 1 for bonds in the New Jersey company, and also after that purchased about $700,000 bonds of the New Jersey company; do you want to correct that statement? A Yes, they were all of the same; the first purchase was a million of the Maine company; then I afterwards bought $700,000, which were issued on account of the Harvard and Yale.

Q They were bonds of what company? A The same company, Maine No. 1; that is the company that got into trouble and reorganized and I took new bonds for the old.

Q So you exchanged about $1,700,000 of the Maine company for bonds of the New Jersey company? A Yes, right around that sum.

*Cross examination* by Mr. Faulks.

Q That is, you or your customers? A Yes. My customers and myself.

Q You never bought any of the bonds of the Metropolitan Steamship Company of New Jersey? A Not of the company itself; I might have sold them for customers. All my purchases were the original company, Maine No. 1.

WILLIAM C. WATT, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A Newton, Massachusetts.

Q Do you live in the State of New Jersey? A No, sir.

Q What is your business at the present time? A Connected with the Liggett Drug Stores.

Q Have you ever been connected with the American Trust Company of Boston? A Yes.

Q When? A Up until July 1, 1913; over a period of eleven or twelve years prior to that.

Q Were you then connected with them in 1909 and 1910? A Yes.

Q What was your position at that time? A In 1909 I had the title of bond clerk.

Q Have you any knowledge of the incorporation of the Metropolitan Steamship Company of New Jersey? A No, sir.

Q Do you know that such a company was incorporated? A Yes.

Q You were a stockholder of record of that company, were you not? A I believe so.

Q And you remember what portion of the stock stood in your name at one time? A No, I don't recall that.

Q But some stock did stand in your name? A Yes, sir.

Q Have you any recollection of having received any notices of stockholders meetings of that company? A There is one definitely placed in my mind relating to a proposed reduction in the capital stock; that was placed in my mind by reason of the fact that it came at the time the reorganization went through.

Q That was November, 1909? A Somewhere around that, I believe.

Q Other than that have you any recollection of receiving any such notice? A No.

Q When you did receive such notices, what did you do with them? A Not having received but the one that I referred to, I cannot very well answer.

Q What did you do with it? A My recollection is rather vague on it; the papers in connection with it are all with the Trust Company.

*William A. Mossman, direct.*

Q Whatever papers you had in the matter were turned over to the Trust Company? A Correct.

Q I show you a letter addressed to you by Campbell Carrington, treasurer, dated December 3, 1909; do you remember having received that letter? A I do.

Q And that was in connection with the reduction of the stock which you testified to a moment ago? A Correct.

*Mr. English.* I offer that letter in evidence.

(Marked Exhibit C. 93.)

Q Did you ever attend any stockholders' meetings of the Metropolitan Steamship Company of New Jersey? A No, sir.

Q Did you ever give any proxies for stock? A I don't recall giving any, unless I gave one in connection with this reduction of stock.

Q The one meeting you speak of here? A Yes.

*Mr. Faulks.* No cross examination.

WILLIAM A. MOSSMAN, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A Newton Center, Massachusetts.

Q Do you live in the State of New Jersey? A I do not.

Q Are you a stockholder of the Metropolitan Steamship Company of New Jersey? A I am.

Q To what extent? A One share.

Q How did you get that share, for cash or what? A As I remember it, it was given me in lieu of deferred coupons or bonds, two bonds.

*John E. Liggett, direct.*

Q Of the old Metropolitan Steamship Company of Maine? A Yes.

Q Which afterwards went in the hands of the receivers? A That is as I remember.

Q How long have you held that one share of stock? A Since March, 1910.

Q Have you ever received notice of a stockholders meeting? A Never remember one.

Q Have you ever given a proxy? A No, sir.

No cross examination.

JOHN E. LIGGETT, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A Augusta, Maine.

Q Are you a resident of the State of New Jersey? A No, sir.

Q Are you a director of any transportation companies? A Yes.

Q What transportation companies? A The Eastern Steamship Corporation, the Maine Central Railroad; I think that is all; the Atlantic, Gulf & West Indies Steamship Company and the Clyde Steamship Company.

Q Did you know Governor John F. Hill in his lifetime? A Yes.

Q Are you any relation to him? A Stepson.

Q He married your mother? A He did.

Q Where did he live? A Augusta, Maine.

Q What transportation companies, to your knowledge, was he director of?

*Mr. Faulks.* At what time?

Q When did he die? A He died two years ago last March, I believe, March, 1912.

Q For three years prior to March, 1912, what, to your knowledge, had he been a director of, what transportation companies?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

*Mr. Ward.* Same objection.

A I believe he was a director in the Eastern Steamship Company and the Maine Central Railroad; if there were others, I have forgotten them.

Q Do you know a company known as the Eastern Securities Company? A I have heard of it, yes, sir.

Q In what connection have you heard of it? A I have heard there is such a company.

Q Do you know any of the stockholders of it? A I do not.

Q Do you know any of the officers of it? A Yes.

Q Who? A Mr. Norman L. Bassett is the treasurer, I believe, and a director, and Mr. Nathan Weston, I believe, is another director.

Q Where do those two gentlemen live? A Augusta, Maine.

Q Who are the executors of the estate of Governor Hill? A My mother, Mrs. Hill.

Q Anybody else? A No.

Q What is the business of Mr. Norman L. Bassett? A Attorney.

Q Does he represent your mother as executrix? A He is the attorney for the estate, yes, sir.

Q It already appears in this case that the Eastern Securities Company is the owner of 8,500 shares of the common stock of the Eastern Steamship Corporation; have you any knowledge

of that fact; have you ever seen the certificate? A Yes.

Q When did you first see that certificate? A I think about two years ago.

Q Where did you see it? A In Boston.

Q And in whose custody was it when you saw it?

*Mr. Faulks.* Objected to as immaterial, irrelevant and incompetent.

A It was found in the safe deposit box which belonged to Governor Hill.

Q To whose name was the certificate made out? A I cannot tell you; I have forgotten.

Q Was it made out in the name of Governor Hill? A I have forgotten.

Q Was there anything attached to it indicating whose property it was?

*Mr. Ward.* Objected to as immaterial and incompetent and not the proper proof of the fact sought to be brought out.

*Mr. Faulks.* Same objection.

A Yes.

Q What was there attached to it? A I don't know whether there was a paper pinned to the certificate or whether the certificate was in an envelope; I have forgotten.

Q If it was in an envelope, was the memorandum endorsed on it? A Endorsed either on the envelope or the paper.

Q And in whose writing, if you know, was the memorandum? A Governor Hill's.

Q You recognized his writing? A Yes.

Q Do you recall what that memorandum said?

*Mr. Faulks.* We object to that as not being proper proof of the contents of the paper.

Q Where is that momorandum now? A I have no knowledge.

Q What became of it after you last saw it? A I cannot tell you.

Q Do you know whether it was destroyed or not? A I cannot tell you.

Q What did the memorandum say?

*Mr. Faulks.* I submit that no foundation has been laid for the oral evidence of this witness as to the contents of the memorandum.

Q Do you know what was done with that certificate which was thus found with Governor Hill's papers? A I do.

Q What was done with it?

*Mr. Faulks.* Objected to as irrelevant, immaterial and incompetent.

*Mr. Ward.* I object on the same ground and on the further ground that the testimony is not evidential against the Pacific Navigation Company under any issues raised by the pleadings.

A It was put in a safe deposit box in Boston.

Q Whose box?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A A box was taken out in the name of the Eastern Securities Company.

Q And put in that box? A And put in that box.

Q Do you know whether the memorandum which you referred to was included with the certificate which was put in that box? A I can not tell you.

Q You don't know about that? A No.

Q Tell us what the memorandum said.

*Mr. Faulks.* I renew my objection.

*Mr. Ward.* Same objection.

A To the best of my recollection, it simply said that the certificate was the property of the Eastern Securities Company, or belonged to the Eastern Securities Company.

Q You say you have no recollection as to whose name the certificate was made out? A I cannot tell you; I have forgotten.

Q Have you made any effort to ascertain who really owned the certificate? A In what way?

Q After you discovered this certificate with the memorandum of Governor Hill annexed to it, what did you do with it? A Put it in the safe deposit box.

Q Whose box? A Hired a box.

Q You hired a box? A I have forgotten whether I did it personally; I may have done it personally, or Mr. Bassett may have done it; that was two years ago.

Q In whose name was the box taken out? A Eastern Securities Company.

Q Do you know whether the Eastern Securities Company was notified of that fact? A I don't know; I don't remember.

Q Was this Mr. Bassett whom you have mentioned the Norman L. Bassett who was treasurer of the company? A Yes.

Q Do you know who owned the stock of the Eastern Securities Company? A I haven't the slightest idea.

Q Do you know who incorporated it?

*Mr. Faulks.* Objected to as immaterial.

*Mr. Ward.* Same objection.

A I believe it was incorporated through Mr. Bassett's office.

Q Do you know at whose request his office incorporated it?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A I don't personally know definitely.

Q Had Mr. Bassett been attorney of Governor Hill in his lifetime?

*Mr. Ward.* Objected to as immaterial.

A He acted for him in several legal matters, I believe.

Q Do you know whether Mr. Bassett caused the company to be incorporated at the request of Governor Hill? A No.

Q You don't know. A Not definitely, no.

Q You say "not definitely"; why do you say that? A I meant no, I didn't know. Mr. English, may I change that a trifle? I have no personal knowledge of the request of Governor Hill to Mr. Bassett; Mr. Bassett told me that he was requested to.

Q You know in that indirect way through him? A Yes; I don't know of my own personal knowledge.

*Mr. Faulks.* I move that that be stricken out on the ground that it is hearsay evidence.

*Mr. Ward.* I make the same motion.

Q Without asking you if you know who requested Mr. Bassett to incorporate that company, I understand you to say that whatever you do know, you know from what Mr. Bassett told you, is that it? A Yes, sir.

Q And that is Mr. Norman L. Bassett? A Yes.

*John E. Liggett, direct.*

Q Do you know whether the Eastern Steamship Corporation has ever held any stockholders' meetings since the death of Governor Hill? A Yes.

Q And do you know whether any request for proxies was made preliminary to any of these stockholders meetings? A That is usually the case; I presume it was carried forth.

Q Do you know whether any request was made for a proxy to vote the stock of the Eastern Steamship Corporation held by the Eastern Securities Company? A I presume so in the regular course of business.

*Mr. Faulks.* The question is whether you know.

A I didn't see the request made, and I presume the stockholders all get a notice.

Q Have you any personal knowledge of any request for proxies from the Eastern Securities Company? A Yes, I have.

Q What is that? A I received a letter from the Eastern Steamship Corporation, advising me that there were several of the stockholders who resided in Augusta who had not sent in the usual proxies, requesting me to obtain from the various people who had omitted, through negligence probably, to mail the proxies—if I would get the proxies from them and have them mailed to the office of the company, which I did.

Q Can you give us the names of any of the stockholders in Augusta who were included in that list?

*Mr. Ward.* Objected to as immaterial and incompetent.

*Mr. Faulks.* Same objection.

A I have forgotten. I know the Eastern Securities Company was one of them.

Q And as a result of that request to you as a director of the Eastern Steamship Corporation, what, if anything, did you do with reference to securing those proxies?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

*Mr. Ward.* Same objection.

A I saw these various parties and asked them to send in their proxies.

Q Who did you see on behalf of the Eastern Securities Company?

*Mr. Ward.* Same objection.

*Mr. Faulks.* Same objection.

A Mr. Bassett.

Q Do you know whether the proxy was sent in after your interview with him?

*Mr. Ward.* Same objection.

A I have no personal knowledge, I didn't see it.

Q Did you attend the stockholders' meeting? A No, I did not.

Q You didn't personally send in the proxy, if one was sent? A For the Eastern Securities Company?

Q Did you personally mail it or cause it to be mailed? A To the best of my knowledge, no.

Q Did you see any proxy that was executed by the Eastern Securities Company before it was mailed? A I cannot tell you, I don't recollect.

Q To go back a moment; can you recollect in whose name that certificate of 8,500 shares was, when it was found among Governor Hill's papers? A In whose name?

*Mr. Faulks.* Objected to.

Q Who was named in the certificate?

*Mr. Ward.* Same objection.

A I have no distinct recollection of it.

Q Have you any recollection at all, distinct or otherwise?

*Mr. Faulks.* Objected to; if he has no distinct recollection, the answer would be of no possible value.

A I have no distinct recollection or otherwise.

Q Have you ever seen that certificate since that day when it was found in Governor Hill's box? A When it was put in the safe deposit box.

Q Since that time? A No.

Q At the time it was put in the safe deposit box had the original name in it been changed? A The certificate hadn't been changed in the slightest.

Q Who holds the key to that box where that certificate is?

*Mr. Ward.* Objected to as immaterial and irrelevant.

A I think Mr. Bassett does.

Q As treasurer of the Eastern Securities Company? A Yes.

Q Do you know the names of any of the incorporators of the Eastern Securities Company? A No.

Q Do you know Mr. George L. Bassett? A Yes.

Q Who is he? A A brother of Mr. Norman Bassett.

Q Is he a lawyer, too? A Yes.

*Calvin Austin, direct.*

Q In Augusta? A Yes.

No cross examination.

CALVIN AUSTIN, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A My residence is Dunstable, Massachusetts.

Q Do you live in the State of New Jersey? A No, sir.

Q What is your business, Mr. Austin? A Transportation.

Q By rail or water? A Water.

Q And how many years have you been engaged in the transportation business? A Thirty-eight.

Q What position do you occupy at the present time in any transportation company? A President of the Eastern Steamship Corporation.

Q President of any other steamship companies? A Yarmouth Steamship Company, Limited.

Q Are you familiar with the Metropolitan Steamship Company, a corporation of the State of Maine, which we have referred to in this case as Company No. 1, and which was originally owned by Mr. Whitney? A Yes, sir.

Q And how far back have you personal acquaintance with that company? A I have been connected with it since May 15, 1905.

Q And you knew of the company previous to that? A Yes, ever since I was in the transportation business, from a boy up.

Q And between what points did that and the Company No. 1 operate? A You mean dates?

New Jersey State Library

Q I mean what ports. A New York and Boston.

Q What character of traffic did they carry when you knew them back in 1905? A Merchandise, freight.

Q Was it during those days that Mr. Whitney was in control, back in 1905? A Mr. Whitney sold the property to Mr. C. W. Morse the first of May; I think the transfer was made on the 15th of May, 1905, and then Mr. Whitney dropped out of it, and we took control of it, I as president of the corporation.

Q You became president of Maine No. 1 in 1905? A Yes.

Q I assume that prior to becoming president of that company you investigated the earnings etc., of the concern, did you not? A I did not.

Q Have you any personal knowledge as to whether or not its operation of freight boats had been profitable prior to 1905?

*Mr. Faulks.* I object to that as too remote to be material.

A I know what Mr. Whitney showed Mr. Morse during the conversation in buying them, which was about twenty minutes.

Q How long did you continue to be president of the Maine Company No. 1? A Until it went into the hands of the receivers.

Q When was that? A That was February 3, 1908.

Q During the year 1905, let us say from May, 1905, for the fiscal year ending May of 1906, was the Maine Company No. 1 operated profitably?

*Mr. Faulks.* I make the same objection, that it is too remote to be material.

A There was a profit.

Q What about from 1906 to 1907? A No profit.

Q At the time that you became president of the company in May, 1905, was there any competition by water in the transportation of freight between Boston and New York? A Yes.

Q Who was your competitor? A A company called the Joy Line.

Q Was that Joy Line competition a severe competition?

*Mr. Faulks.* Objected to as calling for a conclusion; he ought to describe it, if you want information in regard to it.

A Well, it wasn't any benefit to us.

Q But notwithstanding, you did make money that first year of your presidency from 1905 to 1906? A I don't remember when the fiscal year ended, but from the time I took it until about the first year, we showed a profit.

Q At the time you took it in 1905, there was no passenger service operated by the Maine Company No. 1? A No, sir.

Q During your presidency was a passenger service installed? A Yes, sir.

Q Will you tell us the names of the ships? A Yale and Harvard.

Q When were they put into commission? A September, 1907.

Q And they operated between Boston and New York? A Yes.

Q Carrying what? A Freight and passengers.

Q Were the Yale and Harvard operated profitably during your presidency? A I cannot answer that.

Q Can you tell whether or not they carried many passengers during the time they were operated?

*Mr. Faulks.* That question, I think, is too indefinite; "many passengers" does not mean anything.

Q Were the Yale and Harvard a popular method of travel between Boston and New York and vice versa?

*Mr. Faulks.* I object to that; you are asking him to characterize something almost verbatim in the words of your bill.

A Yes.

Q Tell us why you say that they were a popular mode of travel; what were the facts that make you reach that conclusion? A How much detail do you want me to go into?

Q Whatever you think is necessary to establish that fact. Suppose you describe the boats, the make-up and their equipment and the passenger accommodation, and whether or not that accommodation was taken up on each trip, and matters of that character. A These ships were 404 feet long, 50 foot beam, 10 foot guard, and were designed by Dunbarten of Scotland; the hulls were built at Chester, the machinery at Hoboken, and the joiner work in New York; they cost $1,225,000 apiece; they were up-to-date in every respect. Their names gave them a great send-off; they were put on in September, 1907, and ran about forty days. 1908 was a fair year; some days in the week you run full, other days you do not. They had only about 265 state rooms and they were not large enough to take care of the expense that it cost to operate them,

which was $4,000 a day; some days they would earn that, and other days they would not.

Q Did they carry freight as well as passengers? A They had a capacity when full for about 250 tons of cargo; some cargo figures in weight a great deal different than others; you fill a boat full of furniture and it won't add the weight that pig iron will, and we average about 150 tons a trip.

Q What was the total passenger capacity of each of those ships?

*Mr. Faulks.* As distinguished from the rooms?

A I think we were licensed to carry 600 people.

Q Did you often carry the 600? A No, sir. The class of people that patronized those boats would not travel unless they had a stateroom.

Q Were the staterooms always taken on the trips, or most always taken, regardless of whether they were occupied by one or more persons? A We sold the room and they put as many into them as they chose; we didn't dictate that.

Q You got just as much money if occupied by one as if occupied by more than one? A If a dozen were in there, we got twelve fares.

Q You got the same price for the staterooms? A Yes.

Q And the state rooms were always taken on those trips? A No, sir.

Q How about in the summer? A It would depend on the weather; a very hot night they would fill up well; a cool night they would drop off; rainy weather, very much so, drop off, or rough weather.

Q Then besides the passengers you always carried freight on each trip? A We averaged about 150 tons a trip, as I remember.

Q Taking the average for the season, those ships made money, did they not? A That depends where you put it.

*Mr. Faulks.* You are speaking of the time prior to the receivership?

*Mr. English.* Yes, during the time that Mr. Austin was president of the company.

Q What do you mean by saying it "depends on where you put it?" A Those ships while we ran them, what freight they carried was the picked freight; our freight averaged $2.56 a ton on our freight boats; the freight that we give those boats averaged about $3.40 a ton.

Q What about the passenger traffic? A I have explained to you about the passenger traffic, as far as I can go into that from memory.

Q Did your company keep a separate account of the earnings of the Harvard and Yale as opposed to the freight boats? A No, those accounts, I remember, were all put in together.

Q Did you have any means of ascertaining what the earnings of the Harvard and Yale were, as opposed to the freight boats? A We took the gross earnings of the Yale and Harvard each and every trip.

Q Then you knew what the expense of operating each trip was, didn't you? A Yes, as I say, about $4,000.

Q So that taking from your knowledge of what the cost of running each trip was and the operating expense of every trip, what is the fact with reference to either a gain or loss on each particular trip; was there a gain or was there a loss?

*Mr. Faulks.* What does that question include; what do you include under operating expense?

*Mr. English.* This $4,000 a day which he says it cost to make each trip.

*Mr. Faulks.* Do you want the witness to take into account any overhead?

*Mr. English.* No, not at all on this answer.

A I cannot answer that, and I didn't understand it that way and I didn't put it that way. At the end of the year when we struck a balance, I said it cost about $4,000 a trip.

Q When you took your balance at the end of the year, how did the cost—the total cost per trip of these ships between ports, compare with the gross receipts received? A I don't remember.

Q Was there a gain or loss on that basis? A I don't remember that.

Q How are those figures to be had; who has the books in their possession now? A The books previous to the receivership were taken to New York by Mr. McKinnon for examination, and they were kept on Pier 14, and Pier 14 was burned, and as far as I know, they were burned; I have never seen them since; the books from the receivership up to the present time, are down at the office.

Q Were you acquainted with the Eastern Steamship Company? A Yes, sir.

Q Were you an officer of that concern? A President.

Q At the same time that you were president of the Maine Company No. 1? A Yes, sir.

*Calvin Austin, direct.*

Q Did the Eastern Steamship Company also go into the hands of the receiver about the same time? A The same day.

Q And that was generally due to the panic, was it not? A Due to not having money enough to meet our bills.

Q And that condition was brought about by the panic of 1907? A I cannot answer that question.

Q You say they went into the hands of the receiver because you couldn't raise the money; those companies were not thoroughly financed at the time the panic came on, isn't that true?

*Mr. Faulks.* Which companies are you asking about?

*Mr. English.* Both of them.

*Mr. Faulks.* We have nothing to do with the Eastern Steamship Company; if we have, it is the first time I have heard of it.

Q Isn't it true that the Metropolitan Company of Maine No. 1 went into the hands of a receiver because it was not properly financed at the time the panic came on? A At the time it went into the hands of a receiver, we owed something over a million and we didn't have the money to meet the bills.

Q Was that deficit of a million dollars brought about by an operating loss or because the company had bought other property and spent its money that way? A It built the Yale and Harvard at an expense, as I have said, of about $1,225,000 apiece, and most of that indebtedness was on that.

Q Do you know who the receivers of the Maine Company No. 1 were? A William T. Cobb of Rockland, Maine, and myself, and A. I. Culver, of New York. I named myself second, because I was the second man on there.

*Calvin Austin, direct.*

Q And the receivers under the order of the court continued to operate the company, did they not? A Receivers for the Metropolitan Company No. 1?

Q Yes. A That is right.

Q And they continued under the order of the court to operate the company? A Yes, sir.

Q They operated the freight boats? A Yes, sir.

Q And the Harvard and Yale? A Yes, sir.

Q You were the operating man of the three receivers, were you not? A Yes, sir.

Q What competition was there in water transportation between New York and Boston during the time of the receivership? A We had what we termed the Merchants Line for freight, none for passenger.

Q What was the Merchants Line? A Massachusetts, Bunker Hill and the Old Colony.

Q You mean it operated those three boats? A I don't know what corporation they belonged to; I know they ran as a competitor between New York and Boston to the Metropolitan Line.

Q And they ran as the Merchants Line, is that correct? A That is what they termed it.

Q And the Merchants Line was a corporation? A I cannot answer that.

Q Do you know who owned those three ships? A No, sir.

Q Do you know who owned the Merchants Line which ran those three ships? A No, sir.

Q Are you familiar with those three ships which you have named? A Yes, sir.

Q About when were those three ships put into commission? A January, 1908.

Q What was the character of those ships? A They were about 450 feet long, 50 foot beam,

high power, and carrying capacity of 1,500 tons cargo.

Q And they were freight ships only, were they not? A Yes, sir.

Q Fast freight? A Twenty knots.

Q That is fast for a freighter, isn't it? A They didn't run though that speed.

Q Isn't 20 knots fast for a freighter? A Not any more for a freighter than for a passenger boat. It is a pretty fast boat.

Q Do you know whether those boats were built brand new and put in commission in 1908, or had they been in commission before that? A No, they were new.

Q Put on then for the first time? A Yes.

Q Are you familiar with the cost of those ships? A Yes, sir, $600,000 apiece.

Q $1,800,000 for the three? A Yes, sir.

Q Do you know where their Boston terminal was? A Yes, Central Wharf.

Q Where was their New York Terminal? A Pier 10 and 11, North River.

Q How long did those three ships of the Merchants Line continue to operate as fast freight boats? A March 19, 1910.

Q Have you any knowledge of whether they operated profitably as freight boats or not? A No, sir.

Q Mr. Austin, you are familiar with the fact which already appears in this case, that the receivers sold the freight boats and the Harvard and Yale and the wharves belonging to the Metropolitan Company of Maine No. 1? A I know they were sold.

Q At a receiver's sale? A Yes.

Q And I suppose you also know the fact that they were afterwards turned over on the reor-

ganization to the Metropolitan Steamship Company of New Jersey, do you not? A Yes, sir.

Q Do you know from your knowledge of the shipping business, whether the Metropolitan Steamship Company of New Jersey operated the Yale and Harvard after it acquired them? A I do not.

Q Are you familiar or acquainted with the company which we have designated here as Maine No. 2, and which has the corporate title of the Metropolitan Steamship Company, a corporation of the State of Maine, which was organized after the sale by the receivers of the property of Maine No. 1? A I understood there was a corporation under the State of Maine, called the Metropolitan Steamship Company of Maine, but whether it is No. 2 I don't know.

*Mr. Faulks.* We have called the old Metropolitan Steamship Company of Maine No. 1 and the second Metropolitan Steamship Company of Maine No. 2 all through this case.

*Witness.* Wasn't there one put in between?

*Mr. Faulks.* Only the New Jersey Metropolitan in between.

Q That company which we call No. 2, which was organized in March, 1910, is that the company you refer to now? A No, the company I had reference to was organized in the fall of 1909 and was operated by the Assets Realization Company from January, 1910, until March.

Q That is the company which we call the New Jersey company, that was incorporated under the laws of the State of New Jersey; have you any knowledge what, to your mind, is a third Metropolitan Steamship Company which was or-

ganized under the laws of the State of Maine in March, 1910? A Yes.

Q That is the company which we call Maine No. 2; did you have any connection with this Maine Company No. 2? A Yes, sir.

Q What was your connection with it? A President.

Q When did you become president? A I was elected director March 22; as I haven't those records, I cannot tell you when I was made president, but I presume at their next meeting.

Q Shortly thereafter? A Yes, it must have been.

Q Were you a stockholder of this Maine Company No. 2? A One share.

Q Did you buy your shares with your own money or was it given to you? A I didn't pay anything for it.

Q Who did pay for it? A I don't know.

Q Do you know who organized or caused to be organized this Maine Company No. 1? A I know the name of the attorney.

Q What was the name of the attorney? A Benjamin Ward, of Portland, Maine.

Q Were you present at the organization meeting of the company? A No, sir.

Q What was the first meeting of the company which you attended? A It was in Boston, after I had been made a director on March 22.

Q And who attended that meeting? A The directors were Galen Stone, James Dean, Harold Williams, B. E. Bird and myself, and I imagine they were present.

Q Have you any recollection of anybody else being present? A No, sir.

Q Did you ever examine the stock books of the Maine Company No. 2? A Never saw them.

Q So you don't know who the stockholders were, or do you know? A I know who the stockholders were at the time I was made a director, but not by seeing it.

Q Who were the stockholders at the time you were made a director? A The directors had one share and I think the name was Grover C. Richards or Richardson had the balance, 29,995.

Q There were 30,000 shares altogether? A Yes.

Q Do you know who Grover C. Richards was? A No, sir, never saw him.

Q Do you know whether or not he continued to hold his stock or whether he transferred it? A I do not.

Q Mr. Richards was treasurer of the company at one time, was he not? A I don't know.

Q You mentioned a Birdsall E. Bird a moment ago; didn't you mean B. E. Case? A Yes, sir, B. E. Case.

Q Where did you first meet Mr. Case? A I don't remember meeting him previous to that meeting.

Q And he was one of the directors, you say? A Yes.

Q Did he become an officer of the company? A Treasurer and secretary.

Q How long to your knowledge did he continue to hold those two offices? A Until January, 1912.

Q Are you still president of that company? A That company has been absorbed, as you know, into the Eastern Steamship Corporation.

Q And that was the date when the company went into the Eastern Steamship Corporation? A About that time.

Q I don't mean the exact date. Who was Mr. Galen Stone who was one of the directors

of that company, Maine No. 2? A Of the firm of Hayden & Stone, bankers.

Q Who is Mr. Harold Williams that you mentioned? A He is an attorney in Boston.

Q Who is James Dean? A Of the firm of William A. Reed & Co., bankers.

Q Bankers where? A Boston, New York and Chicago.

Q To your knowledge did the Maine Company No. 2 operate the Harvard and Yale after March, 1910? A The Metropolitan Steamship Company No. 2, as you term it, operated the Yale and Harvard during the year 1910.

Q Do you know under what arrangement, if any, with the Metropolitan Company of New Jersey? A They paid us 15 per cent. on the net earnings.

Q Was that arrangement by a written agreement between the two companies, that is, between the New Jersey company and the Maine No. 2? A There was a written memorandum, I don't know about agreement.

Q Have you ever seen it? A Yes, sir.

Q I show you a paper which has been given to me from the attorneys of the defendants in this case, and which is an agreement between the Metropolitan Steamship Company of New Jersey and the Metropolitan Steamship Company of Maine No. 2, dated March 5, 1910, relating to the operation of the Harvard and Yale, and ask you if that is a copy of the paper which you refer to? A I imagine it is; I don't want to read that all through.

Q You haven't very much doubt about it? A We operated them on that 15 per cent., that is the main feature of it.

Q Were you present when this agreement was signed? A No, sir.

Q When did you first learn of the fact that it had been signed? A I cannot answer that; I imagine that Mr. Case passed it over to me and told me the circumstances.

Q When you became president you found that this paper had been executed, didn't you? A I presume so.

Q Who requested you to act as president of that company? A Mr. E. D. Robbins.

Q Who is he? A He was counsel for that corporation.

Q Counsel for the Maine Company No. 2? A Yes, sir.

Q Was he at that time also general counsel of the New Haven Railroad? A That is what the guide book gave him.

Q You knew that to be the fact? A Why, so understood, yes, sir.

Q Where and when did Mr. Robbins ask you to take the presidency of that company? A I cannot remember.

*Mr. Ward.* I enter the same objection to the evidential force of this line of testimony, as to the Pacific Navigation Company.

*Mr. English.* On what ground?

*Mr. Ward.* I merely mean to reserve our rights to argue that the case against the Pacific Navigation Company is not being proved by this character of testimony.

*Mr. English.* I don't know what bearing this will have on your matter; on this examination you ought to make specific objections.

*Mr. Ward.* I have no objection to the form of the question or the nature of the testimony, except we claim it has no evidential value.

*Mr. English.* I am satisfied to have you reserve that objection as to your client, Pacific Navigation Company.

Q How long before you in fact did become president did he make this request of you? A I haven't the slightest idea, possibly a week.

Q Can you remember where the conversation took place? A No, sir, possibly over the telephone.

Q How long prior to that had you known Mr. Robbins? A I wasn't what you would call acquainted with Mr. Robbins then; I had met him off and on possibly for three or four years, and I met him at the Algonquin Club at a banquet, and I met him between New York and Boston on the trains and passed the time of the day the same as I would with any business man I knew.

Q Had you ever had business relations with him prior to your becoming president of the Maine Company No. 2? A I don't think so.

Q After you became president in that way you continued until the company was absorbed by the Eastern Steamship Corporation? A Yes, sir.

Q And continued to hold one share of stock during that time? A As far as I know.

Q What property did the Maine Company No. 2 own during the time you were its president? A The four freighters: the James S. Whitney, H. Dimock, William Dimock and Herman Winter, and the car floats and lighters, and the equity in Union Wharf and everything that went to make up the corporation in the way of fixtures, floats, stagings, tracks, office furniture.

Q Those freight steamers you mentioned, the Whitney and others, had formerly belonged to the Maine Company No. 1, did they not? A Yes, sir.

Q And then had passed into the control of the receivers? A Yes.

Q And had been sold by your company to the Metropolitan Steamship Company of New Jersey? A Yes, sir.

Q And the same is true of the car floats? A Yes, everything went.

Q They were named the Eastern and the Western? A Yes.

Q And the same is true of the dock properties? A I don't know whether the equity in the pier was sold.

Q You remember that as receiver of the Maine Company No. 1, you and your co-receivers had control of the Union Wharf and India Wharf in Boston? A India Wharf was a rented pier.

Q But you did own the Union Wharf? A Yes, owned the equity in it.

Q You sold that with the other property to the Metropolitan Steamship Company of New Jersey? A Yes.

Q At least to Mr. McKinnon, who transferred it to the Metropolitan Company of New Jersey? A Yes.

Q And also on that sale you transferred the Harvard and Yale? A Yes.

Q At the time you were president you said the Maine Company No. 2 owned these freight boats, car floats and the wharves; were they already in the possession of the company when you became its president, or were they acquired after you became president? A As the company

had been formed and organized before I became president, I imagine they were all in.

Q Do you know how much was paid for these properties, that is to say, the freight boats, the car floats and the wharves? A No, sir.

Q Did you ever see any books, or examine any books, to ascertain that fact? A No.

Q You simply accepted them as part and parcel of the property which you became connected with? A That was done by the instructions of the court when they were sold.

Q You are thinking now of the receivership. I am speaking now of the Maine Company No. 2. A No, the court had nothing to do with that.

Q So when you became president of a company which did own that property, you made no inquiries as to where it came from? A No, sir.

Q Did you know how much the company had paid for it? A No, sir.

Q Do you know where the books of the Maine Company No. 2 now are? A Yes, sir.

Q Where? A At the India Wharf.

Q And in whose custody? A Eastern Steamship Corporation.

Q You were subpoenaed to produce those books; did you bring them? A I didn't understand that to require them.

Q At any rate, they are in the possession of the Eastern Steamship Corporation? A Yes.

Q And you are the president of that company? A Yes.

Q Who is the secretary? A R. A. Pepper.

Q With what officer of the company are those books kept? A They are kept in the vaults down there with our other books.

Q They are accessible to the officers of the company? A Yes.

*Mr. Faulks.* You are asking about the business books?

*Mr. English.* I am speaking about all the books of the company.

*Witness.* What I understood you to want would be the books of the company, the ledger that shows the earnings and expenditures. The record books I have not, or the stock book.

Q You mean the book of minutes, by the record book? A Yes.

Q Do you know where they are? A Mr. Case was secretary of that corporation and he always brought the book with him and took it away with him, and I have never seen it.

Q Where did Mr. Case live? A Hartford, Connecticut.

Q Do you know what Mr. Case's business is? A An attorney in Hartford.

Q Have you ever been in his office? A No, sir.

Q You didn't know anything about his connections? A No, sir.

Q You spoke of the organization of the Eastern Steamship Company in January 1912; was that a consolidation of a number of steamship lines? A The Eastern Steamship Company consisted of the line between Boston and Portland, Boston and Kennebeck River, and Boston and the Penobscot steamers running from Bath to Boothbay and from Rockland to Bar Harbor, and also from Boston to Eastport and Lubec and St. John. In 1912 the Eastern Steamship Company was made a corporation that bought the Metropolitan Line and the Maine Steamship.

Q And also the Eastern Steamship? A We had the Eastern Steamship; we changed the name from the Company to a Corporation.

Q And took over those two other corporations you have named? A Yes, sir.

Q What was the Maine Steamship Company; under what state was that incorporated? A I don't know; originally it was Maine.

Q State of Maine? A Yes.

Q What boats did it operate and between what points? A The Northland and the North Star, between New York and Portland, and they owned the Massachusetts, the Old Colony and the Bunker Hill, and the equity in Union Wharf, a half of Franklin Wharf, Portland; we bought the ships and those properties; we didn't buy the company.

Q The Metropolitan Steamship Company, what did that own at the time? A Just what we found there, the four ships and everything that went to make up the corporation.

Q I understood you to say that the Maine Steamship Company owned the Union Wharf; I understood you previously to say that the Metropolitan Steamship Company of Maine, No. 2, owned that Union Wharf? A It did at that time you were talking about.

Q They transferred it? A It had been transferred to the Maine Steamship Company.

Q So when we get down to January, 1912, the Metropolitan Steamship Company of Maine, No. 2, owned the four freight boats and the car floats and nothing else? A As I remember it, yes.

Q And the Maine Steamship Company owned the Northland and the North Star and the Union Wharf? A The equity.

Q And the India Wharf, what about that? A No.

Q And the Eastern Steamship Company owned the lines which you spoke of? A They also owned the Massachusetts, the Old Colony and the Bunker Hill.

Q The Maine Steamship Company did? A Yes.

Q Do you know how the Massachusetts, Old Colony and Bunker Hill got out of the possession of the Merchants Line into the possession of the Maine Steamship Company? A No, sir.

Q To your knowledge had those three boats last named been operating during the interval between when they were first put on in 1908 until January of 1912, when they went into the Eastern Steamship Corporation—had they been in commission and operating during that period? A Yes.

Q And by what lines during that period, to your knowledge, had they been operated? A Operated as freighters from 1908 to 1910; during 1910 they were built over for passenger boats and operated for freight and passenger during 1911.

Q Do you know who built them over? A Yes, sir.

Q Who? A William Cramp & Sons, ship builders, Philadelphia.

Q Do you know who caused them to be built over by them? A No.

Q Do you know who paid for them? A No.

Q Do you know how much was paid for them? A Yes.

Q How much, roughly? A Between a little over $400,000 apiece for the Massachusetts and Bunker Hill; the Old Colony was not changed.

Q How did you learn how much had been spent on building those boats over? A I inquired of the people that built them over when I had them changed afterwards.

Q Of whom did you inquire? A Cramp's.

Q Did you inquire of anybody else? A No, there wasn't any necessity of it.

Q You say you built them over a second time? A I added 125 staterooms to them and Cramp's people made those changes, so it was natural for me to find out, when I placed the contract, how much money had been spent on them previously.

Q Did you build over all three of those ships after they came in your possession? A The Massachusetts and Bunker Hill.

Q They had been built over previously? A Yes.

Q And you spent $125,000 on each one of those? A I didn't say that.

*Mr. Faulks.* He added 125 staterooms.

Q Did you add 125 staterooms to each boat? A Yes.

Q How much more did that cost? A We added those staterooms and we installed them with oil fuel and made a great number of changes and general repairs, which cost something over $200,000 apiece.

Q On each boat? A Yes, sir.

Q So that those two boats have had spent upon them about $600,000 apiece over and above their original cost? A The two boats stand a little over $1,300,000 apiece.

Q Do you know what company owned them at the time they were built over the first time? A No, sir.

Q You never inquired about that? A If I did, I didn't get the information.

Q Did you inquire, as a matter of fact? A I don't remember.

Q Do you know when the Merchants Line ceased to operate those three boats? A No, I should say about the first of October, 1911.

Q And between the first of October, 1911, and the time they were taken over by the Eastern Steamship Corporation, who operated them? A They were lying idle.

Q You have said that when the Eastern Steamship Corporation was formed, the Maine Steamship Company owned the Union Wharf. Was it sold to the Maine Steamship Company by the Metropolitan of Maine, No. 2, of which you were president? A Not while I was president.

Q When did you cease to be president? A The transfer was made during January, 1910, and April, 1910, previous to my having anything to do with it.

Q I understood you to say, Mr. Austin, that that company owned the Union Wharf when you became president of it, Maine No. 2? A That was a misunderstanding; they did not.

Q We will have to straighten that out, then. What did the Maine Company, No. 2, own when you became president of it? A Four freighters and the paraphernalia that went with it to operate the line.

Q It did not own any wharf properties? A No, sir.

Q So that after the incorporation of Maine Company, No. 2, and its acquiring the Union Wharf and before you became president, it parted with its interest in Union Wharf? A Yes.

Q And your understanding is, they sold it to the Maine Steamship Company? A The Maine Steamship Company owned it when we took the Maine Steamship Company over.

Q Did the Maine Steamship Company operate any boats running out of Boston? A The Maine Steamship Company operated the Massachusetts and Bunker Hill in 1911 as passenger and freight boats.

Q Did those boats tie up to the Union Wharf? A No, sir; they tied up at India Wharf.

Q The Maine Steamship Company made no use of the Union Wharf? A Not with their ships.

Q Who did use the Union Wharf as a matter of fact? A The Metropolitan rented it.

Q The Metropolitan of Maine No. 2? A Yes.

Q And from whom did they rent it? A I presume from the Maine Steamship Company.

Q Where are the records that show those facts as to the sale of the Union Wharf by the Maine Company No. 2? A I don't understand. The Maine Steamship Company No. 2 didn't dispose of Union Wharf. They didn't have it at that time.

Q They had it at some time. It already appears in evidence in this case that the Union Wharf was sold to Maine Steamship Company No. 2, and I want to know if you know where the records are which show the transfer of Union Wharf by the Maine Company No. 2?

*Mr. Faulks.* I don't recollect any such evidence as that.

A I haven't the records. I don't know where they are.

Q Have you ever seen them? A I saw the book as Mr. Case had it at the directors' meeting. I don't remember looking it over.

Q When did you first learn the fact that the Maine Company No. 2 had sold the Union Wharf? A When I became president of the company during March, 1910.

Q Did you at that time learn that they had sold it to the Maine Steamship Company. A Yes, sir.

Q Did your company, Maine No. 2, pay rent to the Maine Steamship Company, for the use of the wharf? A As far as I know.

Q Do you know how much rent they paid? A At one time we paid $39,000. If that was changed, I have forgotten it.

Q That covered what period of time? A That would run back to 1902, when it was owned by Henry M. Whitney, and Eastern Steamship Company, who put some of their boats down there.

Q You are going farther back in time than I am talking about. What I ask now is, how much money Maine Company No. 2, which was not incorporated until March, 1910, paid? A I don't know. There is no necessity of guessing at it because I can verify it.

Q From what? A From the books.

Q Have you got the books in your possession? A They are down at the India Wharf.

*Mr. English.* We will find that out later.

Q At the time the Eastern Steamship Corporation took over the Maine Steamship Company, do you know who owned it? A Maine Steamship Company, as far as I know, a corporation.

Q Who owned the stock of the Maine Corporation? A I don't know.

Q Who attended to the details of that transfer of these various lines of the Eastern Steamship Corporation? A Mr. Stone and Mr. Robbins and I was present at some of the interviews.

Q Mr. Galen Stone? A Yes.

Q Mr. Edward D. Robbins? A Yes.

Q You three were together in the matter? A At various times. I don't know as I was present at all their conferences.

Q And in these discussions and conferences at which you participated, did you learn who owned the stock of the Maine Steamship Company? A No, sir.

Q Did Mr. Robbins control the stock of the company? A I don't know. We didn't buy the stock. We bought the ships. The stock never came into our possession.

Q In these conferences, did you learn who owned the stock of the Metropolitan Company of Maine No. 2? A No, sir.

Q Did you learn who controlled the stock? A No, sir.

Q Did you ever know? A No, sir.

Q You do know that before either of those steamship lines could sell out their property, they had to get the consent of the stockholders, did you not? A I didn't inquire into that. The party that represented them represented the owners, Mr. Robbins, and I supposed he knew what he was talking about, and could produce the goods.

Q Mr. Robbins appeared as representing the owners of the Maine Steamship Company, and

the Metropolitan of Maine, No. 2? A He was the man we made the deal with.

Q You refer to Mr. E. D. Robbins? A Yes.

Q The same man whom you mentioned as general counsel, or one of the counsel of the New Haven Railroad? A Yes.

Q He also at that time was the vice-president of the New Haven Railroad. A I cannot answer that.

Q Did you see any proxies or anything of that character for the transfer of this stock control? A No, sir.

Q Or any papers of any kind, relating to this stock transfer? A No, sir.

Q Did you ask for or receive any copies of directors' meetings or anything of that kind? A No, sir.

Q Who attended to that for you? A Mr. Hight, our attorney.

Q Were you present at any meeting of stockholders of the Metropolitan Company of Maine No. 2, when this proposition of the transfer of the property of that company to the Eastern Steamship Corporation was discussed? A If there were any meetings held, I was there and presided, but I don't remember any meeting.

Q Did the Steamship Corporation take over the Metropolitan Corporation of New Jersey? A No, sir.

Q At that time, namely, January, 1912, was the Metropolitan Steamship Company of New Jersey, an operating company. A I don't know.

Q Did you know of any boats which it was running in Eastern waters? A No, sir.

Q During the summer of 1910, it already appears that the Metropolitan Steamship Company of New Jersey, by an agreement in writing

had turned over to the Metropolitan Company of Maine No. 2, the operation of the Harvard and Yale, and you have already identified the paper. Do you know how long the Metropolitan Steamship Company of New Jersey continued to own the Harvard and Yale, or whether they ever parted with the title to them? A I don't know anything about it.

*Mr. English.* I would like to have marked for identification, a copy of the agreement between the Metropolitan Steamship Company of New Jersey and the Metropolitan Steamship Company of Maine No. 2, which copy was given me by counsel for the defendant.

(Marked Exhibit C. 98 for identification.)

Q When, to your personal knowledge, did the Harvard and Yale cease to operate in Eastern waters. A About the last day of September, 1910.

Q What happened to them, then, to your knowledge? A They were put in condition to go around on the Pacific coast.

Q And what had to be done to them to put them in condition for that trip? A It cost $47,000 to put them in condition.

Q What was done with them? A They had twelve boilers installed with oil; we disconnected six of them, and put on coal—went back to coal. They were docked and had to be examined thoroughly by the United States inspectors and the insurance people. Their saloons had to be replanked, covering put on all the windows, and ports and companionways; ports had to be braced with boards from the inside, and we took on oil—we filled our tanks with oil, and then put as much as we could get on the main

decks. We dismantled them from oil to coal; we couldn't get oil on the way round, so we used oil as far as we could go, with what we could get in New York, and then used coal, taking on coal at various ports, going around there.

Q You say that cost $47,000. Do you mean each ship, or for the two ships? A Two ships $47,000, $50,000 insurance.

Q Whose money paid that $47,000? A As far as I know, the Metropolitan Steamship Company of New Jersey.

Q Did you direct the changes of those ships and fitting them out for the Pacific coast, I mean general direction? A About two-thirds of it, I should say, then it was taken from me and turned over to Captain Goodall.

Q At whose request did you attend to the alteration of these ships? A Mr. E. D. Robbins asked me to get the ships ready, and talked it over with me about what it would cost, and the routes we would take to send them around there, and finally asked me to get them ready to go around, to the best of my ability.

Q When was it that Mr. Robbins talked that matter over with you? A Possibly the 15th of September, 1910.

Q Where was the conversation held? A Over the telephone, I imagine, first, and probably met him in his office afterwards.

Q His office where? A New York.

Q At the Grand Central Station in New York? A Yes, sir.

Q Did you go down there for the purpose of conferring with him, or how was that meeting arranged? A I imagine I went there to confer with him on the matter.

Q In reference to the transfer of these ships to the Pacific coast? A To get them ready to go around to the Pacific coast.

Q Who was present at that meeting in New York, between you and Mr. Robbins? A No one.

Q Just you two? A Yes.

Q Whereabouts in the Grand Central Station was it held? A At his office.

Q Did you meet a Mr. McGregor while you were on that trip in New York? A He was in my employ. I might have met him, and I might not, I don't remember.

Q In what capacity was he employed by you or your company? A Mechanical engineer.

Q Robert McGregor? A Yes.

Q Do you know a Mr. George W. Sterling? A Yes.

Q What connection had he had with your company? A. He was general freight agent, of Maine No. 2.

Q Had you ever had business relations with him before that? A Yes.

Q What? A He was in the employ of the Metropolitan Steamship Company from the time I took it over and up to the present time, from 1905.

Q He had been with the old Maine Company No. 1? A Yes.

Q Do you know whether he was connected with the Metropolitan of New Jersey? A He was not, as far as I know.

Q But he was connected with the Maine No. 2? A Yes.

Q Did you give Mr. Sterling any directions with reference to the changing of these boats? A Mr. Sterling assisted me in buying the supplies to equip them for going around there.

Q Did he have anything to do with the physical alteration of the steamers? A No, sir.

Q He bought the supplies? A Yes.

Q He has already testified in this case that the bills which he incurred were sent to you. Do you know what you did with those bills? A Sent to me for my approval, and then were sent back and have all been paid. I have a memorandum of them.

Q After you approved the bills, what did you do with them, to whom did you send them? A Probably returned them to him, and he sent them to the treasurer of the New Jersey corporation, as far as I know.

Q You don't know what he did with them after you returned them to him? A No.

Q But you approved them? A Yes.

Q And was your approval required by Mr. Robbins? A No, sir.

Q What part did Mr. Robert McGregor have in fitting these ships out for transfer to the Pacific coast? A If my memory serves me right, he went to Europe about that time. As I remember that now, there were some fifteen days around there we took them out of commission between New York and Boston, and I probably consulted with Mr. McGregor on matters pertaining to getting them around there. I think we laid out the routes on the maps, and the speed that we would run them on, and the time it would take between points in arranging to buy supplies and coal, McGregor, I think, worked on that some.

Q Who was the man who, under you, superintended the physical changes in those steamers? A There wasn't any changes except—

Q Those you describe? A Excepting changes in those boilers, and our engineers did that, and

Harry Black, who represents Lloyds, the insurance people, was there all the time, and really had the voice in what we should do to get them ready to go around there, because they handled the insurance.

Q Mr. McGregor testified in this case that he received instructions from you to overhaul those ships, and make them seaworthy, so as to get to the Pacific coast? A Making them seaworthy was only planking up the windows so if the sea struck them, it wouldn't break the windows and doors, and inside to brace them on the ports where they opened. The ports opened inside, so if a heavy sea came up against them, it wouldn't force them open: we docked them, and looked them over to see if the rudder and steering gear was all right.

Q Mr. McGregor had some charge of some part of that? A He had charge of our engineers' department; the engineers were under him.

Q He took his instructions from you, he said, is that right? A Yes.

Q Mr. McGregor has testified that he met you at Mr. Robbins' office in the Grand Central Station in New York. Do you recollect that fact? A No, I do not.

Q And his testimony further was that he was at one end of the room, while you and Mr. Robbins were conferring at the other end? A I don't remember being there with him.

Q You wouldn't say he wasn't there? A No.

Q You have no recollection of it? A No.

Q Did Mr. McGregor incur any bills in connection with a part of the work? A He did; if he gave any orders or instructions to have anything done, we recognized the bill. He is a very capable man.

Q Do you remember approving his bills? A I approved every bill.

Q Do you remember that Mr. McGregor prepared specifications for this overhauling? A There wasn't any specification; there wasn't any plans; it didn't require it. A man that knows anything about a ship could walk over it and see in thirty minutes the whole thing that had to be done. I talked with him, as to the ability of the men to send around there, especially in the engineers' department.

Q Do you know Mr. L. H. Stewart? A Yes.

Q Did he have anything to do with the sending of those ships to the Pacific coast? A Nothing.

Q In what capacity did you know Mr. Stewart? A He was claim agent when he first came with us, and afterwards acted as a sort of assistant for me in my New York office.

Q Claim agent of what company? A Settling over and short damage claims of Metropolitan Steamship Company No. 2.

Q Do you know whether he went to the Pacific coast on those ships? A He didn't go on the ships, he went there afterwards, across by rail.

Q Why did he go, if you know? A I don't know.

Q Do you know who sent him? A No, sir.

Q At the time you did what you did do in connection with the changing of the Harvard and Yale, you were president of the Metropolitan of Maine, No. 2, that is true? A Yes, sir.

Q Were you president of any other transportation corporation at that time? A Eastern Steamship Company.

Q What interest did you, as president of the Maine Company No. 2, or what interest did your

company have in sending the ships to the Pacific coast? A Nothing.

Q Then why did you bother with it? A I was operating them at the time that the arrangements were made to send them around there, and Mr. Robbins asked me to put them in shape to do it, and I was very glad to do so, to the best of my ability.

Q Why were you very glad to do it? A Just the same as I would take you in my automobile down to the station, if you were going there.

Q To accommodate your friend Robbins? A Yes, and general experience, and I was under a salary.

Q Did you feel under obligations to Robbins because of your salary? A Under no obligation to any one, sir.

Q What did Mr. Robbins say to you with reference to the fitting out and transferring of the Harvard and Yale to the Pacific coast? A I have related that he talked the matter over with me. I don't know when, where, or how long it took; we were going to send them on the Pacific coast, and he asked me if I would get them ready to go around there.

Q What did he say? A He gave me the impression they were going around there. I don't know who owned them or chartered them, or whether they were bought or sold, or anything of the kind.

Q During the time they were operated by the Metropolitan of Maine No. 2, did they earn sufficient to pay this 15 per cent. or whatever it was, to the New Jersey company?

*Mr. Faulks.* Why don't you put the agreement in, so we will know what we are

talking about so it will appear on the record.

*Mr. English.* I have no objection to that, and I will ask to have the agreement marked as an exhibit.

(Marked Exhibit C. 98.)

Q By this agreement between the New Jersey company and Maine No. 2 (Exhibit C. 98) the Maine company incorporated agreed to equip the Harvard and Yale for the use of oil instead of coal for fuel, and to operate them between New York and Boston not later than October 15, 1910, and to pay to the New Jersey company the amount of revenue obtained from the steamship lines, the actual expenses incurred in the course of the operation of the ships, less the expenses for outfitting and repairs for fuel and wages, persons employed on the steamships, including the handling of freight and the cost of insurance on the cargo and taxes and supplies, and also less 15 per cent of the revenue obtained after making these deductions. Do you know how much the 15 per cent retained by the Maine company amounted to after paying these various expenses? A No.

Q Is that ascertainable from any books? A Yes.

Q What books? A Metropolitan No. 2, those I referred to.

Q Down at the wharf now? A Yes.

Q Do you know whether any payment was made to the Metropolitan Steamship Company of New Jersey after making these deductions? You retained 15 per cent after paying those expenses, and the balance was to go to the New Jersey company. Do you know whether any such payment was made? A No, sir.

Q Do you know whether any payment was made, or you don't know how much was made? A I don't know how much was made. There was a balance there.

Q But you don't know how much it was? A No.

Q Then the balance was turned over to the New Jersey company? A As far as I know.

Q Did you make any effort to retain the operation of the Harvard and Yale for another year? A After we decided to send them around to the coast?

Q No, before that. I understand the deciding was done sometime in September. Did you have any desire to operate them another year if you could? A No, sir.

Q Did you ever discuss with your directors the question of renewing this agreement for the operation of the Harvard and Yale? A Which board, No. 2?

Q Yes, directors of Maine No. 2? A I imagine that was first before the directors; after I found out what the arrangement was, I never discussed it afterwards.

Q Did you ever discuss the matter with Mr. Robbins? A I don't remember that I ever did. The agreement was all made in favor of the Yale and Harvard.

Q Before you became president? A Yes, and was in their favor; it cost $75,000 to operate it.

Q How long, to your knowledge, had the sending of the Yale and Harvard to the Pacific coast been under discussion and in contemplation? A I cannot say.

Q When did you first become aware of it? A As near as I remember, it was about the 15th of September.

Q You say after you became president, you became cognizant of this agreement, (C. 98) dated March 1, 1910, and which required your company to go to the expense of changing these ships from oil to coal burning, and vice versa, and didn't you find out at that time what was in contemplation by making those changes? A The changes were all under way, sir, at that time.

Q As early as March? A Yes. By instructions of Mr. McKinnon and W. A. Fletcher & Co.

Q At the time you became president, what was the physical condition of the Harvard and Yale, what was being done with them? A They were at Fletcher's going through making these changes and making these repairs, and I picked the thread up where they left it off, and finished it.

Q Equipping them to burning oil instead of coal? A Yes.

Q Then they were changed completely from coal to oil burning ships? A Yes.

Q When they went to the Pacific coast, they were changed back to part oil and part coal? A For the convenience of taking them around there.

Q That was the fact? A Yes.

Q So originally, when built by your company, the old Maine No. 1, they were coal burning ships? A Yes.

Q Do you know how much it cost to change them from coal burning to oil burning ships. A About $25,000 apiece.

Q And then it cost $47,000 more to change the two of them to part coal and part oil, and fit them for the Pacific coast? A That is

what we paid to get them ready to go around there. That included supplies, food, and everything pertaining to the trip.

Q You say "we" paid out. Who do you refer to? A I presume the New Jersey company paid the bill. I say that, it is a sort of a habit, I use that expression.

Q Who was treasurer of the New Jersey company at that time? A I don't know, sir.

Q Mr. Douglas Nicholson? A I don't know; I never saw any of the officers, to my knowledge.

Q Do you know Mr. Nicholson? A This gentleman here (indicating Mr. Nicholson); whether he was the man or not, I cannot say.

Q When did you first meet him? A I met him in Mr. Hight's office two or three days ago for the first time.

Q Just lately? A Yes.

Q I wish you would see if you cannot remember, Mr. Austin, when you first heard of the fact that it was contemplated sending the Harvard and Yale to the Pacific coast? A I cannot tell you anything different than I have; if I could, I would, gladly.

Q Do you know Mr. Edward T. Canfield? A Never heard of him.

Q Do you know Mr. Warren D. Chase? A No, sir.

Q Did you ever hear of him? A I might have heard the name mentioned; I don't know whether he is in Portland, New York or Boston.

Q When you met Mr. Nicholson, two or three days ago, what was the occasion? A I went into Mr. Hight's office, as I do frequently, and I was introduced to Mr. Nicholson.

Q Was Mr. L. H. Stewart employed by any of your companies? A He was employed by the Metropolitan No. 2.

Q What was his position in that company? A As claim agent at first, then I used him as a sort of an assistant in my New York office. I have an office there and in Boston.

Q Do you know what he was doing between the time when he went out of the employ of the Maine Company No. 1, and went into the employ of the Maine Company No. 2? A He wasn't in the employ of the Maine Company No. 1.

Q I understood you to say so? A No. 2.

Q So the first time he became an employee of any of your companies, was Maine Company No. 2? A Yes.

Q Do you know what he had been doing previous to that, and what his business experience was? A In claim work for various railroads.

Q Do you know what railroads?

*Mr. Faulks.* Objected to, as immaterial.

A I think he came from the New Haven.

Q How did it come about that you took him into your employ—when I say your employ, I mean Maine Company No. 2? A He was recommended, and I don't know why.

Q Did Mr. Robbins suggest to you that you take him into your employ? A No.

Q Anybody in the New Haven, that you know of?

*Mr. Faulks.* Objected to, as immaterial.

A I don't remember. He was probably well recommended—a very efficient fellow in that line.

Q Do you know where he is now? A No, sir.

Q Or what he is doing? A No, sir.

Q When Mr. Robbins asked you to fit out the Harvard and Yale to go to the Pacific coast, did you make any inquiry as to what his interest was in the matter? A Of Mr. Robbins?

Q Yes. A No, sir.

Q You simply accepted his suggestion without any further inquiry, one way or the other? A He probably told me the bills would be paid? and I took his word for that. I should never have contracted unless I knew where the money was coming from.

Q Did he tell you by whom the bills would be paid? A I don't remember that.

Q Did you take the trouble to inquire, or were you satisfied to take his word? A I was satisfied to take his word.

Q Do you know in what capacity Mr. Robbins was acting when he made this promise to see that the bill was paid—personal promise? A Mr. Robbins acted as my counsel during the time that I was made president of Maine No. 2, up to the time that the Eastern Steamship Company—corporation took it over, and I knew him in that capacity.

Q Did Mr. Robbins as your counsel, tell you as president of the Maine Company No. 2 to fit out these boats? A He asked me to fit them out, yes, sir.

Q You understood that the Maine Company No. 2 was not going to pay the bill, did you not? A I don't remember the conversation. It is probable that he told me that the New Jersey company would pay the bill, he said the bills would be paid, and they were paid; I don't see that it makes any difference.

Q If he acted as your counsel when you were president of the Maine Company No. 2, and

promised to see that some person other than the Maine No. 2 paid the bill, he must have been acting for some other concern. What was it? A I don't know, I didn't make inquiries.

Q Did he offer to pay these bills as a personal matter? A I don't know, he said they would be paid, and they were paid.

Q You had the bills sent to him for payment? A I don't know; Sterling can answer that question.

Q Did you consult with your directors with reference to the changing of the Harvard and Yale after Mr. Robbins' request to you? A About sending them to the coast? I imagine I did.

Q Do you remember with whom of the directors you consulted? A I probably told it to the board; if the board met, I gave them that information. Otherwise I would have taken it up with them individually.

Q Did you ever discuss the matter with Mr. Galen Stone? A I presume I did. I saw him most every day.

Q Do you know what, if anything, he said about it? A No.

Q Did Mr. Galen Stone, at that time, have any connection with the New Haven Railroad? A Not officially, he might have been a stockholder. I cannot say about that.

Q Was he a director, do you know? A No, sir, he was not.

Q When the Eastern Steamship Corporation took over the Metropolitan Company of Maine, No. 2, or rather the property of that company as you have described, what did they pay for it?

*Mr. Faulks.* I object to as immaterial, irrelevant and incompetent.

A We gave them 8,500 shares of the common stock of the Eastern Steamship Corporation, $1,700,000 bonds.

Q And that was to purchase what property?

*Mr. Faulks.* Same objection.

A Metropolitan No. 2.

Q What did that property, Maine No. 2, consist of? A The two freighters, lighters and floats and everything that went with it.

Q Those old boats which had belonged to the Maine Company No. 1? A Yes.

Q What was the total stock of the Eastern Steamship Corporation, 8,500 shares of which you gave to the Maine Company No. 2?

*Mr. Faulks.* Same objection.

A 61,500 shares.

Q And the par value of $100 each? A No, sir, $25 each.

Q What was the total bond issue of the Eastern Steamship Company, $1,700,000 of which you gave to the Maine Company No. 2?

*Mr. Faulks.* Same objection.

A $8,500,000.

Q And that bond issue was through a mortgage, a lien on all the property of three companies which went into the Eastern Steamship Corporation?

*Mr. Faulks.* Same objection.

A Yes.

Q Do you know how much your Eastern Steamship Corporation paid for the properties of the Maine Steamship Company?

*Mr. Faulks.* I submit that that is clearly irrelevant, immaterial and incompetent, none of that property was ever owned either by the Metropolitan Steamship Company No. 1 or its receivers, or the Metropolitan of New Jersey, or Metropolitan No. 2 of Maine, and in no way involved in this case.

A 20,000 shares of common and 15,000 preferred and $2,500,000 in bonds.

Q What was the total preferred issue of that company? A 30,000.

Q What was the par value of the preferred stock? A $100.

Q Do you know the market value of the common?

*Mr. Faulks.* Same objection.

A The certificates were issued at $50 and afterwards reduced to $25.

Q That was the par value? A The par value was $25.

Q You negotiated, or were one of the parties who negotiated, these purchases or this purchase? A I was present at some of the interviews.

Q And you participated in the negotiations, did you not? A I heard some of the conversation.

Q Didn't you do any talking yourself? A Not much.

Q What valuation did you put on the property? A I didn't put any on.

Q In your negotiations which resulted in the Eastern Steamship Corporation taking over these properties, the properties of the Maine Company No. 2 and Maine Steamship Company

were all put in as one general property, were they not? A They negotiated for it at the same time.

Q And what valuation did you put on these properties? A I didn't put any on.

Q Somebody appraised them for you, did they not? A I don't think so.

Q Do you say that you bought those properties without having had an appraisal made? A We knew the conditions of the properties. You can make forty appraisals on them, if you want to; no appraisals alike.

Q What was your judgment as to their value at that time? A I cannot answer that.

Q Take these three steamers, the Massachusetts, Bunker Hill and Old Colony, they stood in about a million dollars apiece, did they not, with the repairs? A A little rising a million apiece.

Q That was because of the repairs that had been put on them, the two overhaulings? A Yes.

Q What about the four freight steamers which belonged to the Maine No. 1, namely the James S. Whitney, H. M. Whitney, the Dimock and Herman Winter, what did they cost? A They cost about $120,000 when they were new.

*Mr. Faulks.* You asked about their original cost?

*Mr. English.* Yes.

Q What did you put them in at to the transfer to the Eastern Steamship Corporation?

*Mr. Faulks.* I object to that as being irrelevant, immaterial and incompetent; moreover, it does not appear that the witness put them in at anything.

A I didn't put them in for anything.

Q Someone put them in at some figure; what was the figure?

*Mr. Faulks.* Same objection.

A I don't know.

Q Do you remember testifying at Washington during the month of December? A Yes.

Q Before some committee of Congress? A Yes, sir. If you will allow me to explain that a moment—

Q Do you remember testifying in that matter that these four freight boats which I have last named were put in at a value of a million dollars?

*Mr. Faulks.* I submit that that is incompetent and improper. Mr. Austin is your witness and you have examined him fully on these matters, and I do not think it is at all proper for you to refer to or to question him upon testimony that he may have given at some other time in some other proceeding, whether before a Congressional committee or not.

*Mr. English.* I want to refresh his memory.

*Mr. Faulks.* He is your witness and it is not proper to examine him in that way.

*Mr. Ward.* Same objection.

A I didn't give any such testimony.

Q Are you quite sure about that? A I am not going to mention that matter unless you let me explain the whole thing from beginning to end.

Q Go ahead and explain, Mr. Austin.

*Mr. Faulks.* I enter my objection before that is done, on the ground that the evi-

dence thus sought to be brought out is incompetent and improper. Mr. Austin is, as I have said before, the witness for the complainant; he has testified fully here in this proceeding, and he cannot properly be asked as to his testimony in any other proceeding, whether for the purpose of refreshing his recollection or for the purpose of contradicting anything that he has testified to here.

*Mr. Ward.* Same objection.

A I was asked to go to Washington and go before the Marine Fishers to tell what I knew about life boat equipment in connection with the Eastern Steamship Corporation, and I went there fully prepared for that, and when I was called up, a man named Manahan, a representative from Minnesota, caught on to this consolidation business, and he never asked me one question relative to the life boat outfit, but held me right down to that, and he wouldn't allow me to refer to facts and figures I had there with my comptroller, and the committee wouldn't back me up in anything, and I had to stand up and be browbeaten by him, and he made me give my appraisal from my memory at that time, on these ships, which I ran up to about $5,000,000. He didn't want to have it right, and he didn't get it right—

Q Who was the man Manahan? A —and entirely foreign from the subject I went there to testify on.

Q In the negotiations which resulted in the Eastern Steamship Corporation taking over these properties, who negotiated the financial part of it?

*Mr. Faulks.* Objected to as immaterial, irrelevant and incompetent.

A Mr. Stone and Mr. Robbins.

Q Mr. E. D. Robbins? A Yes.

Q That is Mr. Galen L. Stone? A Yes.

Q What is his firm? A Hayden, Stone & Co., bankers.

Q When you say "negotiated the financial part of it," what do you mean by that?

*Mr. Faulks.* You said that.

A They decided how many securities we should give them for those properties.

Q And in what capacity did Mr. Robbins figure in the negotiations? A He represented the Metropolitan and the Maine.

Q The Metropolitan of Maine No. 2 and the Maine Steamship Company? A Yes.

Q He was there representing those two companies? A Yes.

Q Where did Mr. Stone come in? A Mr. Stone was largely interested in the Eastern Steamship Corporation and largely interested in other steamship corporations.

Q You mean the Eastern Steamship Company? A At that time, he was; he financed it when it came out of the hands of the receivers.

Q After the Harvard and Yale went off of the route between Boston and New York was there any passenger service by water between those points? A Massachusetts and Bunker Hill ran there in 1911.

Q By your Maine Company No. 2? A No, sir.

Q By what company? A Maine Steamship Company.

Q Did you have any connection with it? A No, sir.

Q After those two ships passed into the control of the Eastern Steamship Corporation in 1912, did they operate between those points? A They did during the summer of 1912.

Q You were then president of the Eastern Steamship Corporation? A Yes. Those ships only operate about four months out of the year.

Q And they carried passengers and freight between New York and Boston? A Yes.

Q How did their carrying capacity for passengers compare with that of the Harvard and Yale? A Larger.

Q How did their freight capacity compare? A About the same.

Q How did their earning capacity compare? A Not as large, as I remember.

Q Were they as much patronized by passengers as the Harvard and Yale had been? A They didn't stock as much in 1913 as the Yale and Harvard did in 1908.

Q What do you mean by "stock?" A That is the gross earnings.

Q The gross earnings were not as large? A No.

Q Were the operating expenses higher? A About the same, except the fuel; they don't burn quite as much oil. The Yale and Harvard burn about 52,000 gallons on a round trip, and the Massachusetts and Bunker Hill about 42,000. The Yale and Harvard were turbines, very high powered ships; these are reciprocal twin screws, the Yale and Harvard turning sixty-inch wheel 600 revolutions a minute, and these turn about a sixteen-foot wheel, with 120 revolutions, and you cannot operate any passenger line there unless you use oil.

*Calvin Austin, direct.*

Q Do you know approximately what the difference in gross earning between the Harvard and Yale, and the Bunker Hill and Massachusetts? A No, I cannot carry them in my mind.

Q Was there a large difference? A About $100,000, but we made more trips, I think.

Q You say that during the season of 1912 they were operated by the Maine Steamship Company? A 1911.

Q These figures you have just been giving were during 1912? A The Eastern Steamship Corporation operated the Massachusetts and Bunker Hill as passenger and freight between New York and Boston during the season from June until October, 1912, and 1913.

Q And what you said of 1912 was true of 1913? A Yes.

Q Go back to 1911; those ships were operated by the Maine Steamship Company? A Yes.

Q When you took over the Maine Steamship Company into the Eastern Steamship Corporation, or rather the properties of it, did you look into and ascertain what the gross earnings and net earnings of those ships had been during the season of 1911? A No, I did not.

Q You didn't know about that? A No.

Q Who was that left to as representing your interests? A It wasn't left to anyone that I know of.

Q Did you buy a pig in a poke, or did someone look into it for you? Which was it? A We knew what the properties were physically; we knew what the business was then, and we were looking forward, perhaps, to a development of business which hadn't come.

Q Isn't it a fact, Mr. Austin, that the Massachusetts and Bunker Hill were not the success between Boston and New York that the Harvard and Yale had been? A They were not in 1911; they were burning coal and they couldn't make the time; since we put oil on them they have been as perfect as a railroad train.

Q Have they been as great a success as the Harvard and Yale were in their day? A No, I think the business of 1911 had a tendency to injure that business, by not making time; the class of people that travel there is the travelling man in a great measure; it is what we call the "hand-bag man;" they have their little package, and if a man knows he can arrive in New York or Boston at eight o'clock in the morning, he is pretty sure to go that way, and that is what we are working back to.

Q The Yale and Harvard had filled that bill? A The Harvard and Yale went on and made their time for 1907, they were regular; 1908, they were fairly so; 1909, they began to fall down; they had a great deal of trouble with poor coal and with our firemen. It takes forty firemen to run one of those boats, and they are the meanest things that God put on the face of the earth that we have to deal with, and when we put oil aboard we washed that class out. The Massachusetts and Bunker Hill have got sixty staterooms more than the Harvard and Yale. Why? The Harvard and Yale had twenty-eight rooms with baths, and one room and a bath takes up five staterooms, and they had twelve rooms with toilets, without baths; so there is where we lost the number of rooms, or most of the number of rooms on the Bunker Hill and Massachusetts.

Q You charge more with room and bath? A We charge $8 and got a passenger, possibly two, usually one.

Q So the Harvard and Yale had a good will, which the Massachusetts and Bunker Hill didn't have? A In starting out.

Q That stuck by them pretty well? A Yes, they were very fortunate, and didn't get into any trouble.

Q The Massachusetts and Bunker Hill have never attained that same good will in the eyes of the public which the Harvard and Yale had, isn't that true? A We are not doing as much business.

Q So if you judge it by the volume of business done, they haven't come up to the Harvard and Yale reputation? A I cannot say if it is that, or whether the business dropping from the water and going by rail; we have a great competitor by rail; there are 18 trains in the twenty-four hours, against our one.

Q Whatever the facts may be, the facts are that they didn't come up to the Harvard and Yale? A Equally heavy.

Q I mean of the business. A The business has not reached the Harvard and Yale.

Q Isn't it true that when the Harvard and Yale were running, you still had some competition by rail? A Not as sharp as now, not so many trains running.

Q Weren't the rates lower by rail than they are now? A Maybe twenty-five cents possibly; I cannot say as to that; I should have to verify it.

Q There was always a good sharp competition between the New Haven on land and the Harvard and Yale on water? A The competi-

tion of the New Haven Railroad on land, they had the Metropolitan freight boat previous to these coming on, and they have their Sound Lines, and we have that competition of Sound Lines.

Q They are really New Haven properties? A The New Haven controls the New England Navigation Company.

Q And that operates the Fall River and Providence Line and those other lines? A Yes.

Q So that when the Harvard and Yale were in operation, you had the same competition from the New Haven on land and water which you have now with the Bunker Hill and Massachusetts; isn't that true? A Yes, comparatively the same.

Q And in addition to that, the Harvard and Yale had to buck the Joy Line? A The Joy Line was not running then.

Q When? A When the Harvard and Yale were running. The Joy Line came off in 1907.

Q What became of it? A I don't know.

Q You say the Sound steamers, Long Island Sound steamers, were operated by the New England Navigation Comapny? A So I understand.

Q And that is a New Haven Railroad concern? A So I understand.

Q When the Eastern Steamship Corporation took over the Maine No. 2 and the Maine Steamship Company properties, did you get them through the New England Navigation Company or the New Haven Railroad?

*Mr. Faulks.* It does not appear from the evidence that they got them through either of those companies, and I submit that the

question is improper, as calling for a conclusion on the part of the witness, and is asking him to characterize something that was done, and he ought to be asked to testify, if at all on this subject, simply as to what he knows of what was done.

Q Mr. Austin, isn't it true that in the negotiations which resulted in the Eastern Steamship Corporation taking over the properties of the Maine Company No. 2 and the Maine Steamship Company, that the New Haven Railroad, either directly or through the New England Navigation Company, was behind the transaction?

*Mr. Faulks.* I make the same objection to this question as I did before; it is not a proper question; the witness is not connected in any way with the New Haven or authorized to speak for it, and it is not competent or proper to ask him to express a conclusion of this kind, or to characterize what was done in this way.

A The New Haven Railroad was not mentioned then in the matter. We had dealings with Mr. Robbins.

Q Was the New England Navigation Company mentioned? A I don't remember that it was.

Q Was the Hartford & New Haven Transportation Company mentioned? A No, sir, not that I remember.

Q Didn't you testify before the Congressional Committee, that the New Haven Railroad was behind the transaction?

*Mr. Faulks.* I make the same objection as I did before when the witness was interrogated about some testimony that he had

given before the Congressional Committee. Anything he may have said then or may not have said is certainly not evidential as against any of the defendants in this suit whom I represent, and if the purpose of the inquiry is to contradict anything he said here today, of course that is improper, as you know.

*Mr. Ward.* Same objection.

A I tried to impress upon them down there, which they didn't want to understand, that we did our negotiations through Mr. Robbins, and he brought out, just the same as you have brought out here, that Mr. Robbins was counsel for the New Haven Railroad, and when I used the words there "came from the same source," I meant to imply that Mr. Robbins represented both corporations when we took them over. Mr. Manahan didn't want that.

*Mr. English.* I want whatever the fact is.

Q Whatever impression you intended to give Mr. Manahan before his committee, you did say that the New Haven Railroad was behind the transaction?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A If they conveyed the impression that way; I meant that Mr. Robbins, as I have said, was the man that we dealt with, and he represents, as you know, being general counsel of the New Haven Railroad—

Q So you assumed— A I didn't assume anything.

Q You meant the committee to assume— A I meant the committee—to say to them,

which I didn't do as fully as I have to you, just the same as I have here to you.

Q What is that? A That I don't know who owned the Metropolitan Steamship No. 2, haven't the slightest conception of it. The Maine Steamship Company, we bought the ships as a going line, and took them over, and took up their insurance matters and took up their connections with connecting lines and conducted the business right along. We took the corporation over, and who owned the stock, I don't know, and who owned the stock in the Maine, I didn't inquire, and probably wouldn't have found out, if I had inquired.

Q You do know that the Maine Company No. 2 which employed you to be the president got you into that office through the intervention of Mr. Robbins? A Mr. Robbins invited me to take the presidency; I accepted it to get the salary.

Q Mr. Robbins appeared in everything which affected the interests of that Maine Company No. 2?

*Mr. Faulks.* Objected to as improper and calling for a conclusion on the part of the witness; he ought to be asked what Mr. Robbins did or said at any particular time.

*Mr. Ward.* Objected to as leading also.

A In the nature of attorney.

Q And you frequently consulted with him in matters affecting the interests of that company, either in New York or Boston or elsewhere?

*Mr. Faulks.* Objected to as leading and also immaterial and incompetent.

*Mr. Ward.* Same objection.

Q With whom did you consult, other than your Board of Directors, upon matters affecting the interests of the Maine Company No. 2?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A I don't remember any particular time I consulted with Mr. Robbins and the directors Poor and Mr. Stone; it didn't require me to consult with them very much.

Q So who were the two persons, apart from the Board of Directors, with whom you most consulted in the matter? A I imagine Mr. Stone; he is a very able man and had some experience in the steamship business; I think he went on the board at my request.

Q Who else besides Mr. Stone did you consult with. A I don't know as I consulted with anyone, except to give them the general run of the business at the meetings; that is the only time I saw them, except Mr. Stone, he was a director of the Eastern Steamship Corporation.

Q You as president of the Maine Company No. 2 were the responsible head? A I had the practical knowledge.

Q You were the man who ran the company? A Yes.

Q The stockholders, whoever they were, looked to you to protect their property? A I imagine they did.

Q Do you know what salaries were paid—

*Mr. Faulks.* You mean salaries paid by the Maine Steamship Company No. 2?

*Mr. English.* Yes. I include in that question "to officers."

*Mr. Faulks.* Objected to as incompetent and cannot serve any useful purpose in this inquiry, and ought not to be pressed.

A They paid me $6,000 and paid the secretary surely $2,500. Those were the only officers that were paid anything, outside of the fifteen per cent. we got.

Q So where did the fifteen per cent. you got come from? A If they netted $100,000, we got $15,000 of it.

Q On the operation of the Harvard and Yale? A Yes.

Q So the only business the Maine Company No. 2 did up to the fall of 1910—

A This is during 1910.

Q And the only business it did during that period was to operate the Harvard and Yale?

*Mr. Faulks.* It operated the freight boats.

Q Did they also operate the freight boats? A The Metropolitan Steamship Company, No. 2, operated the freight boats.

Q That had belonged to Maine No. 1? A Yes.

Q The only paid officers were yourself and the secretary and treasurer?

*Mr. Faulks.* Same objection.

A They were the officers elected by the directors; the officers had their regular salaries that every other corporation of that nature has.

Q Did your company pay any attorney?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A We didn't pay any attorneys, as I remember, for any organizing or anything of that kind.

Q Did you pay any attorney for legal services

during the time that you became president of the company and including the season of 1910?

*Mr. Faulks.* Same objection.

A I don't remember; if we did pay anything, we paid it in Mr. Hight's office.

Q To Mr. Hight?

A Through Mr. Hight's office; we have a large corporation and there are lots of things coming up in the way of a woman sliding downstairs or a lot of blackmail, and Mr. Coyle in Mr. Hight's office handles those matters for me, and it may amount to $500 or $700 a year.

Q So whatever legal services you paid for were paid for legal services of that character?

*Mr. Faulks.* Same objection.

A That I had anything to do with.

Q Through Mr. Hight's office? A Yes.

Q Did you pay any salary to Mr. Robbins as your company's attorney?

*Mr. Faulks.* Same objection.

A No, sir.

Q When after you became president of Maine No. 2 did you encounter Mr. Robbins in the transaction, either as counsel or otherwise?

*Mr. Faulks.* I object as improper and asks the witness to characterize his meeting with Mr. Robbins at some time or other; he has covered the whole situation, but the question is not proper in form.

Q When did you first encounter Mr. Robbins as counsel for your company, after you first became president of it, speaking of Maine Company No. 2?

*Mr. Faulks.* Same objection.

A When Mr. Robbins asked me to become president of the corporation, if anything of very much importance came up, I brought it up to him, but I don't remember of anything arising; I might possibly have talked over that agreement; I don't remember as I did.

Q You mean this agreement, Exhibit C. 98, which we had here this morning? A Yes.

Q Did Mr. Robbins appear in the matter as your personal counsel in any respect? A No, sir, I have never had occasion to use one until today.

Q Do you know Mr. Charles A. Mellen? A Yes, sir.

Q Who was he? A When I knew him, he was president of the New Haven Railroad.

Q Have you ever had any business relations with him? A No, sir.

Q Did you ever talk with Mr. Mellen or did he with you, with reference to the operation of the ships of the Metropolitan Steamship Company? A No, sir.

Q Or of acquiring ownership of them? A No, sir.

Q Do you remember when the Harvard and Yale were first talked of and contemplated and about the time they were being built, or just before they were being built, having a conversation with Mr. Mellen about them? A Yes, sir.

Q Where was that conversation held? A South Station.

Q In Boston here? A Yes, sir.

Q When was it held? A I should say during the winter of 1905 or 1906.

Q You were then president of the Maine Company No. 1? A Yes, sir.

Q Had the Harvard and Yale then been built? A No, sir.

Q Were they being discussed, the possibility of building them? A They were under construction.

Q And did you seek a conference with Mr. Mellen or he with you, or was it a casual meeting?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A I think Mr. Mellen at that time was a director in the First National Bank of Boston and I was also, and Mr. Wing, the president, asked me to go down and meet Mr. Mellen, which I did.

Q Mr. Wing was the president of the First National Bank of Boston? A Yes, sir.

Q Do you know whether Mr. Wing has a brother who is a lawyer? A He has.

Q Where does the lawyer brother practice law? A New York, the last I knew of him.

Q Do you know the name of his firm? A No.

Q Is it Wing & Russell, or don't you know? A Tom Wing, I know him.

Q Thomas Wing is the lawyer? A Yes.

Q At the request of Mr. Wing, of the First National Bank of Boston, you went to see his co-director Mr. Mellen? A I don't know as he suggested it; I met him.

Q What was the conversation at the South Station with reference to the Harvard and Yale?

*Mr. Faulks.* I object to it as incompetent, and as not proper evidence against any of the defendants whom we represent.

A Eight years ago—I don't remember what the conversation was; I told Mr. Mellen probably

the dimensions of the ships and how they were going to run.

Q Did he say anything to you?

*Mr. Faulks.* Same objection.

Q (Continuing) You must have gone down there to do more than tell him the dimensions of the ships? A I didn't go down there to seek an interview; I don't know as he expected me to, and I don't remember what it was; my impression is that Mellen wasn't, and naturally wouldn't have been, pleased to have had a competitor.

Q Was the object of the conversation to discuss the fact that there was to be a competitor growing out of that situation?

*Mr. Faulks.* Same objection, and further objection that if the question is to be pressed, it clearly ought to be as to what was said and done by either of the parties to the interview, and nothing more.

A If he asked me where they were going to run, I told him between New York and Boston.

Q Did he make any comment on that?

*Mr. Faulks.* Same objection.

A I don't remember.

Q Did he make any threats?

*Mr. Faulks.* Same objection.

A I don't remember that he did.

Q Try and think, Mr. Austin, whether Mr. Mellen said anything to you in the nature of a threat with reference to the operation of the Harvard and Yale.

*Mr. Faulks.* I object as clearly incompetent; it asks the witness to characterize what

Mr. Mellen said, and counsel for complainant knows as well as I do, that the question, if it is to be pressed at all, ought to be as to what was said or done by Mr. Mellen.

Q What, if anything, did Mr. Mellen say in the nature of a threat to you in connection with the operation of the Harvard and Yale, or proposed operation?

*Mr. Faulks.* I object to that on the ground that it calls for a conclusion on the part of the witness and asks him to characterize something that Mr. Mellen either said or did, and that the question is clearly incompetent and improper.

A I don't remember as he made any particular threats.

Q You say a "particular threat;" did he make a general threat?

*Mr. Faulks.* Same objection.

A I don't know as he made any general threat.

Q You say he naturally was not very much pleased at the prospect of competition; what did he say in that connection? A I don't remember as he put it competition.

Q How did he put it?

*Mr. Faulks.* I object to this question upon the ground that I have objected heretofore to anything said at that interview.

A I should naturally say that he would consider it a competitor.

Q Did he say that he considered it a competitor? A I don't remember; it is eight years ago.

Q Do you remember whether you told—don't say what you told him, I ask you whether you do remember whether you did tell to Mr. Fernald anything which Mr. Mellen said to you at that interview? A I don't remember telling Mr. Fernald anything.

Q Have you told us all you can remember of the conversation?

*Mr. Faulks.* Same objection.

A I remember that at the request of, or conversation with Mr. Wing perhaps, that I had better go down and see Mr. Mellen, I went down and introduced myself to Mr. Mellen and told him Mr. Wing told me to come down and have a general talk with him; what the result of it was, I don't remember.

Q Was the subject of the talk the proposed running of the Harvard and Yale?

*Mr. Faulks.* Same objection.

A I cannot say that.

Q Let me see if I can refresh your recollection; do you remember whether Mr. Mellen in the course of that conversation said to you that he wanted the Metropolitan Line, and that if your company put on the Harvard and Yale he would crush it to hell, or words to that effect? A No.

Q You say he didn't say it, or you don't remember? A I do not remember his saying anything of the kind, and I don't remember his ever saying that he wanted the Metropolitan Line.

Q Didn't the Metropolitan Company of Maine, No. 2, during the year 1911, when it operated the freight boats, make money?

*Mr. Ward.* Objected to as leading.

A I cannot answer that here and now, I don't remember; the books will show.

Q Was your recollection about that any better when you were before the Congressional Committee than it is now?

*Mr. Ward.* Objected to as an effort to impeach your own witness.

A I explained to you about that Congressional Committee, and am not going to answer any more questions about it in any shape or manner.

Q Where are the books which will show it? A The same set I told you about down at India Wharf.

Q Who is the person who keeps those books; who is your bookkeeper? A Mr. Robert C. Bird.

Q How long has he been bookkeeper? A He has been with us for the last two years.

Q The Eastern Steamship Corporation? A Yes.

Q Was he bookkeeper when you were president of the Maine Company No. 2? A No.

Q Who was the bookkeeper then? A Mr. Oldfield.

Q What is his full name? A Samuel.

Q Is he in your employ yet? A Yes.

Q In what capacity? A Assistant bookkeeper.

Q And he is the man who kept the books of the Maine Company No. 2 during the time you were president of it? A Yes.

Q Did the Metropolitan Steamship Company of Maine No. 2, when you became president of it, have any financial obligations? A I don't remember.

Q Did it have a bond issue? A I should say not.

Q Did it owe money? A I cannot answer that without referring to the books.

Q Do you know whether they had any notes outstanding or anything of that character? A No, I do not.

Q Did you after you became president learn where the Maine Company No. 2 got the money from to buy the freight boats and Union Wharf which you found they owned when you became president? A I didn't have any conception of it.

Q Did your Maine Company No. 2 have to pay interest on any loans to your knowledge? A I cannot answer that.

Q Because you don't know or you don't remember? A I don't remember; the books will show that.

Q Once more, at the risk of repetition, I wish you would state just what conversation occurred between you and Mr. Robbins when Mr. Robbins asked you to become president of the Maine Company No. 2?

*Mr. Faulks.* I object to that as immaterial, irrelevant and incompetent, and on the further ground that the witness has covered it over and over again this morning.

A I don't know what the conversation was. He asked me if I would take the position; I probably told him, if it was agreeable to the directors of the Eastern Steamship Corporation and they would consent to it, that I would take it, as the two wharves and two offices are near each other, and it wasn't much trouble for me to tack that on, as I had been handling it for years past.

*Calvin Austin, cross.*

Q Did he say by what authority he offered the position? A He did not.

Q And you didn't ask him? A I didn't ask him.

*Mr. English.* Cross examine.

*Mr. Faulks.* I would suggest that I postpone my cross examination until after lunch and ask you to put on another witness.

CALVIN AUSTIN recalled for

*Cross examination* by Mr. Faulks.

Q I think you said this morning that you had been engaged as an operating man in the water line transportation business for thirty-eight years; over what territory has your experience extended? A I didn't intend to convey the information that I had been an operating man all that time; I started as an office boy at that time and worked through the various positions with what was originally the Boston & Bangor Steamship Company, operating steamers between Boston and Bangor and intermediate landings on the Penobscot River and Bay.

Q You started at the bottom of the ladder about thirty-eight years ago? A Yes, sir.

Q And worked your way up and have been in the steamship business ever since then? A Yes, sir.

Q Will you tell us over what lines and territory you have operated since you became an operating official? A I was manager of the Bangor line in 1901 when the Eastern Steamship Corporation was formed, which took in the Bangor line, the Portland line, the Kennebec line and the International line, which was called the Sound line.

Q They all ran from Boston? A They all ran from Boston. Then I was made vice-president and general manager of those lines until —I should have to refer back—possibly three years, when I was made president. When the Metropolitan Steamship Company was taken over, I was made president of that. The next line which was taken over was the Clyde line, and I was made president of that. Then the Mallory Line; and I was made president of that. Then the New York & Cuba Line; I was made president of that. Then the Porto Rico Line; I am president of that. Then the Hudson River Navigation Co., between Boston and New York, and Albany and Troy, and I was made president of that. Those corporations then were put under what we call the Consolidated Line; that was a holding company and I was president of that.

Q You have just said that when the Metropolitan Line was taken over you were made president of the company that operated that line; what do you mean by "taken over"? A Mr. Morse bought the Metropolitan Line, consisting of four freighters and lighters and floats that we talked about before noon, and we kept it as a separate corporation.

Q That purchase was made when? A May 15, 1905.

Q In answer to some questions by Mr. English this morning you said that there was a profit derived from the operation of that Metropolitan Line in 1905 and no profit in 1906; you didn't testify with regard to 1907; was there or was there not a profit from the operation of the line in that year? A I should say not.

Q The Harvard and Yale went into commission in September of that year, did they not? A Yes, sir.

*Calvin Austin, cross.*

Q Tell us a little more particularly than you did this morning about where those boats were built. You said that part of the boats were built or part of the plans for them were made abroad and then that the construction took place at some other plants. A The specifications were made by Denny & Bros. in Dunbar, Scotland; the models from those specifications were made at Roche's ship yard, Chester, Pennsylvania; the hulls were built at Roche's at Chester; the machinery and engines were built at W. & A. Fletcher Company, Hoboken, New Jersey, and the joiner work, the wood work all beyond the main deck, the iron work was built by Inglis & Co., of New York.

Q Is this Mr. Fletcher, of Hoboken, that you have just spoken of, the Mr. Fletcher who in 1910, as it appears by the evidence in this case, appraised the freight boats and the Yale and Harvard, the same man? A I didn't know that he appraised them.

Q I show you Exhibit D. 1 for identification, which is an appraisal made by Mr. Andrew Fletcher, of Hoboken, New Jersey, under date of February 22, 1910, of the freight and passenger boats then owned by the Metropolitan Steamship Company of New Jersey; look that over, sufficiently, please, to see whether or not you can tell as to whether that appraisal was made by the Mr. Fletcher who—

*Mr. English.* I understood him to say that he didn't think Mr. Fletcher made an appraisal.

*Mr. Faulks.* I am showing the paper to him and ask him whether, after he looks at it, he can say whether or not the same

Fletcher who signed that paper is the Mr. Fletcher who had a part in the building of the Harvard and Yale.

*Mr. English.* He cannot say that, unless he knows his signature, and that particular paper before him is a typewritten copy and not signed by Mr. Fletcher.

*Mr. Faulks.* I think the contents of the paper will enable him to say; if they don't, well and good.

*Mr. English.* I object to the question.

A I know Andrew Fletcher as being president of W. & A. Fletcher Company; if I saw his signature, I would recognize that. I never saw that before and never knew that he appraised them.

Q How long had you known Mr. Andrew Fletcher of Hoboken? A Twenty years.

Q What has been the nature of his experience in the matter of building and appraising steamboats, as far as you know?

*Mr. English.* I object to this line of cross examination; it is not cross examination; Mr. Austin was not asked nor mentioned Mr. Fletcher in his whole direct examination, and he cannot be cross-examined on Mr. Fletcher's qualification.

*Mr. Faulks.* If that be so, I will make him our witness for this purpose.

*Mr. English.* I object to the question, as he cannot speak as to Mr. Fletcher's experience.

A As my experience has been, he has built six engines for the various steamers that I have constructed and done a great deal of repair

work. I consider him a very able man in his line of business.

*Mr. English.* I think that is improper and not responsive, and I move to strike that out.

Q From your knowledge of Mr. Fletcher and of the business and work in which he had been engaged up to that time, what have you to say as to his qualifications to appraise the steamboats that were owned by the Metropolitan Steamship Company of New Jersey in February of 1910?

*Mr. English.* I object to that as improper and as calling for a conclusion and as incompetent.

A Every way capable of doing it.

*Mr. English.* Are you through with your direct examination?

*Mr. Faulks.* I am now going back to cross examination.

Q At what time in September, if you recollect, did the Harvard and Yale go into service?

*Mr. English.* What paper do you refer to?

*Witness.* I have a memorandum of that, if you want me to refer to it; otherwise, I will guess at it.

*Mr. English.* I am satisfied; I simply want to know what papers there were.

A The Harvard left New York for Boston September 9, and the Yale left Boston for New York September 9, 1907.

Q How late did they operate?

*Mr. Faulks.* Have you any objection to his refreshing his recollection?

*Mr. English.* Not at all.

*Mr. Faulks.* Then I do not think you should look over his shoulder to see what else the paper contains.

*Mr. English.* Then perhaps I had better not consent to his looking over it. Do you object to my looking over his shoulder if he doesn't object?

*Mr. Faulks.* I object to your doing that.

A We ran them through that September and through October, as near as I remember; I haven't got the date down there when they came off; about the first of November, my impression is, my best judgment.

Q You said this morning, I think, that those boats had 265 staterooms. Does that mean 265 staterooms—? A 265 selling rooms on each steamer.

Q What was done, if anything, by the Metropolitan Steamship Company of Maine in the way of advertising the service afforded by those boats? A When they first went into service, in the way of advertising the Yale and Harvard when they went into service in 1907?

Q Yes. A Our regular advertising in the various newspapers; we didn't decide to put them on until Labor Day.

Q What was the rate of fare charged for the passenger service on that boat? A $4.

Q What was the rate of fare charged for a stateroom other than one with a bath or toilet? A $1.50 and $2; inside room, if my memory serves me right, was $1.50, and what we term the outside, with a window looking out, $2, and

the other rooms ran from $4 up to $8; there might possibly have been a few $3 rooms.

Q When those boats were laid up in the fall of 1907, did that involve the incurring of any expense by the Metropolitan company? A Nothing except looking after them and wharfage, watchmen; some of the engineers usually were kept on board of those ships to look after the machinery; there were no repairs to be made, because they had only worked about forty days.

Q What about being put into service by the receivers in the spring of 1908; first, did they go into service in that year, if you recollect? A About the first of June.

Q Did the putting of them into service necessitate any expenditures on the part of the company, getting them ready to go to sea? A The lay-up expenses and the getting them ready to go to sea was about $52,000.

Q How late did the boats operate in 1908? A The first week in October, about.

Q At that time they were using coal as fuel, were they not? A Yes, sir.

Q What was the condition of the boats at that time? A Very good.

Q Because they were new? A They were comparatively new; they had worked only six or seven months.

Q You spoke this morning of the service that they afforded at that time as having been a popular one; what contributed to that popularity at that time? A Those two ships were in a class by themselves; there was nothing like them. They were, barring the Governor Cobb, the only turbines that were running in this country. They were built at a great cost, palatial in every

way and had good service and were attractive—attracted the trade in good weather.

Q They were put into operation about the first of June and ran until about when? A The first of October, possibly the first week, possibly later than that; I could verify that if I was at the office.

Q Was that the regular season? A Yes.

Q Were they ever operated outside of that season? A No.

Q You say the service was popular in good weather; how was it at other times? A In bad weather our passenger business would fall off very much; it is so in all water lines as on the coastwise business.

Q Which part of the season during which these boats operated was the profitable part, when one part was more profitable than the other? A July and August up to taking in Labor Day; after that there is nothing to do.

Q How was it before July? A June is not a very good month.

Q What have you to say as to whether or not the boats ever operated profitably during June or during September after Labor Day? A Our theory, our method was and is now, to operate those steamers as long as they will meet their expenses. The first two weeks we put them on, the same as the Massachusetts and Bunker Hill, they will not meet their running expenses, and it usually tapers off in the fall about the same way.

Q So that the only real months were July and August? A Those are the money making months.

Q What did you include under the head of expense, as you have just mentioned it, as to the

time when they would make expenses; what was the character of expenses you had in mind in using that word? A They burn about 10,000 gallons more oil; otherwise, their operations are about the same as the Massachusetts and Bunker Hill, which are fresh in my mind, and it costs a little over $4,000 to send one of the boats, the Massachusetts and Bunker Hill, to Boston and New York and back.

Q Just ordinary operating expenses? A That takes overhead charges and all, about $2,200, the bare boat, including fuel, and the other is interest on the securities and wharf and clerical help, maintenance and everything pertaining to it.

Q When the boats came to be laid up in the fall of 1908, what expense was involved in that work? A It cost about $100 a day for a pier to lay them at, and then it would take twenty men to look after them, at least, which we keep; I will say in addition to that, that the engineer corps we are obliged to keep, the union obliges us to keep them anyway, and we pick the best men out of them and put them aboard those ships and maintain them, and they work around during the winter. Those men get their pay and have to be fed, and then in the spring it has a general overhauling for the summer work, which means painting, carpets all to be taken up, renovated and cleaned, boats painted inside and out. We usually begin down in the bottom and scrape the paint off and clean out and repaint; then they have to be docked and the same thing done on the outside.

Q Have you in mind the approximate figures of the cost of operating these boats, say, in 1909? A The laying up from January 1st until

they came out, I think it was about $62,000; that is as near as I can remember.

Q Did that include the laying up expenses or just the expenses for preparing for sea? A Laying up and preparing.

Q What effect does the laying up of the boats during eight months of the year have on the boats themselves? A A steamer will depreciate faster laying up than she will running, except the wear and tear on the carpets and the boilers.

Q When were the boats put into service in 1909, about the same time? A About the first of June.

Q Taken off about the first of October or middle of October? A Yes, around the first of October.

Q What do you know about the expenses that were incurred in laying them up in the fall of 1909 or in getting them ready for sea in the spring of 1910? A The last of the season in 1909, September, we began to have some trouble with the boilers clogging up and with the pumps and with the turbines, but got through the best we could, and took them off, and before I had anything more to do with them, they had passed into other hands, under other management.

Q So you didn't know what the laying up expenses were that year? A No, only I know we paid a bill of $179,000, which was for installing the oil fuel and to retube their condensers, which are very expensive, and making general repairs to put them in shape for the service in 1910.

Q When was that done? A That work was begun in February, 1910, and completed before the boats went to sea that year.

Q How did the boats operate in 1909 as compared with the way they had operated in 1908? A Receipts fell off.

Q How did the operation of the boats then in 1909 compare with their operation in 1908, in the way of keeping their schedule and economy of fuel consumption and matters of that kind? A They didn't make as good time; we had a great deal of trouble with the firemen, which is a very serious matter.

Q What effect, if any, did that have upon the operating revenue? A With the class of people that we carried on those steamers, unless they made the time, we didn't get it; it was the business men that patronized us mostly.

Q So that the receipts fell off in 1909, due to that cause? A That is my opinion.

Q Was there any other cause that you know of? A No.

Q Was the fact that the boats were no longer new or the inability to make time a factor in that result? A I don't say that. For instance, if you have two or three days of bad weather, where the press speaks of it, where it is generally known to the travelling public that is is foggy weather, it injures us very much, not only on that line but all others.

Q What was the amount of insurance that was carried on the Yale and Harvard during this period that you have covered? A $1,200,000 on each boat, a total of $2,400,000.

Q What was the rate, if you know? A About three per cent.

Q Was there any reduction or rebate or allowance for the time that the boats were laid up? A Slight.

Q Were the freight boats also kept insured during the time that they were owned by the

Metropolitan Company No. 1 of Maine and by the receivers and by the Metropolitan Company of New Jersey? A Yes, sir.

Q What amount of insurance was carried on them? A I think $1,100,000 on the four ships and the equipment.

Q Do you know what rate paid on the insurance was? A About five per cent. The amount of the premiums for a year on the six ships and the equipment was $125,000.

Q Did those boats depreciate any during the time that they were operated by the companies that I have just mentioned and the receivers? A Yes, sir.

Q To what extent or what per cent, if you can state it in that way; state what the usual allowance for depreciation is. A You very seldom would find two operators that agree on depreciation; it depends a good deal on how the properties are taken care of. The Government obliges every steamship corporation today to charge off depreciation; the Eastern Steamship Corporation is charging off three per cent. on the cost price of the fleet.

Q How does that compare with the rate of depreciation usually charged off? A I have talked with a good many operators on that, some charge three and a half, some charge as high as five.

Q Is three a low percentage? A It depends; I think on the Eastern three per cent is a fair depreciation. You can take a line where it works a ship much harder than it does on others. Smooth water, you take the Sound Line, and they are easier on a ship than it is on a ship from New York to Boston. Why? Because you are in smooth water all the time.

What wears the ship out is by getting into a heavy sea where they wrench and rack and pull.

Q Would you say that three per cent. was a fair rate for the Yale and Harvard and the freight boats during the period that I have been talking about? A That is what I put on the freight boats; it is quite a tax to the operator; it amounts to over $300,000 to the Eastern Steamship Corporation that has to be charged off every year.

Q Do you think that is a fair rate to apply to the Harvard and Yale and the freight boats? A Yes, and I think it is a good rule.

Q Do you know what factors were taken into consideration in determining the operating expenses of freight boats and of the Harvard and Yale while they were operated by the Maine Steamship Company No. 2 in 1910? If you do not understand the question, let me say this. The operating agreement of 1910, which is in evidence as Exhibit C. 98, provided that the Maine Company was to have 15 per cent. of the revenue after making the following deductions, that is, the actual expenses incurred in the course of the operation of the steamships, for outfitting and repairs, for fuel, for the wages of all persons employed on said steamships, for labor handling freight carried by said steamships, for insurance upon the cargo borne by said steamships, for taxes, for supplies purchased for said steamships; what I am getting at is this: in determining that fifteen per cent. was any effect given to the bond interest or to the interest on capital invested, or to depreciation or anything of that kind?

*Mr. English.* I object to that, because there is a written paper which sets up what is to be included, and that speaks for itself.

A We didn't pay any bond interest or any interest of any nature that I remember, or pay any insurance, or didn't charge off any depreciation.

Q It appears by the evidence already in the case, you made an appraisal of the Harvard and Yale and of the freight boats and freight flotilla of the Metropolitan Steamship Company of New Jersey in February 1910; do you remember doing that? A I think I did by request of Mr. Fessenden.

Q It also appears that you made no charge for that service.

*Mr. English.* This again is not cross examination. There is nothing referred to about it on the direct examination.

*Mr. Faulks.* I make Mr. Austin our witness wth reference to this appraisal.

*Mr. English.* Very good.

Q I want to know if you can tell us why it was you made no charge for that service? A I was receiver of those properties at the time and in the employ of the company, and when he asked me to make that appraisal, I never gave it a thought of making a charge; it didn't take me three seconds to do what I did. I had the properties before me; I thought of the values a great many times and I had been over it a great many times; it never entered my mind that I should make a charge on the thing for the work I did.

Q How familiar were you with the various boats that you appraised? A I knew them as

well as I could any steamship that I had been connected with; I had been through them time and time again; knew every part of them and knew of the repairs that were being made to them.

Q Have you frequently been called upon to make and have you frequently made appraisals of other steamship boats? A I have had my advice asked a great many times about such matters.

Q What has been you practice as to making a charge for that service? A Never charge a cent.

Q You have already testified, I think, that you received a salary of $6,000 a year as president of the Maine Steamship Company No. 2, during 1910? A Yes.

Q And were you at that time also president of the Eastern Steamship Company? A Yes, sir.

Q Do you know, Mr. Austin, when the work of changing the steamers Massachusetts and Bunker Hill owned by the Eastern Steamship Company, from freight to passenger steamers was begun; you testified this morning that those boats operated up until March 19, 1910; how soon after that was the work of turning them into passenger steamers begun? A They must have begun right away; it was quite a job and would have taken some little time.

Q Do you know definitely whether it was begun in the spring of 1910? A I misunderstood you on that. I got a year away from my time. They came off in March 1910 and were rebuilt for passenger service, so that came in 1911; I cannot say when that work was begun.

*Calvin Austin, cross.*

Q Since the Massachusetts and Bunker Hill have been made into passenger steamers, they have operated in the summer months between Boston and New York, have they not? A Yes, sir.

Q During the seasons of 1911, 1912 and 1913? A Yes, sir.

Q What has been their season during each of those years? A The first of June until the first of October; I think we began last year the ninth of June, and will probably begin the same time this year.

Q How did those boats compare in passenger capacity with the Harvard and Yale? A They have 60 rooms on each steamer more than the Yale and Harvard.

Q What rates are charged for the passenger rooms on those steamers? A $1.50, $2 and $8; they have two rooms with bath attached to them we sell for $8; two rooms on each steamer.

Q What is the fare as distinguished from the stateroom charge? A Four dollars.

Q How does the freight capacity of those boats compare with the freight capacity of the Harvard and Yale? A About the same.

Q How has their running time between New York and Boston and Boston and New York compared with the running time of the Harvard and Yale? A There isn't but a very little difference; I should say that the Harvard and Yale are possibly twenty minutes to half an hour faster on the same conditions.

Q What do you mean, same water conditions? A Same water conditions, same tides and same obstructions, same number of times you have to slow down or stop for something in your way in the East River.

Q What time do the Yale and Harvard leave New York? A Five o'clock.

Q And Boston the same time? A Yes, sir.

Q What time has it been the practice of the Bunker Hill and Massachusetts to leave New York and Boston? A At five o'clock.

Q Have they afforded a daily service during the time that they have been in operation? A Yes, sir, including Sundays.

Q Did the Harvard and Yale run on Sundays also? A Yes, sir.

Q You told us something this morning about the changes that were made in the Harvard and Yale from coal burning to oil burning; why was that change made? A From oil fuel you get a uniform heat, which gives uniform steam, which turns the propellers at the same revolutions per minute all the time; the oil is sprayed into the boilers by turning a valve, and becomes a white heat immediately, and you can retain that for all time. With coal, it is shoveled in by the firemen any way and and clogs up, fires get heavy and get dull; then they have to draw the ashes—pull the fires, as we term it—and the steam runs down, and consequently we lose time, and you are not near as sure of your course by using coal as you are oil, as you can readily see. Then again, it is almost impossible to get the 235 to 240 tons of coal on board in New York during the time we lay over, from the time we get in there in the morning until we leave at night, taking out and putting on the cargo that we have been carrying.

Q So that the result of that change was to enable the boats to make their time more regularly and also to keep their course better? A And it cost $60,000 more a year to do it.

Q The oil more than the coal? A Yes.

Q Was there any reason that some of the oil boilers were taken out and coal boilers put in when the boats were sent around to the Pacific coast other than that they couldn't get the necessary supply of oil on the way around? A You are correct on that.

Q That was the sole reason? A Yes.

Q Are the Massachusetts and Bunker Hill oil burning boats? A Yes, sir.

Q What piers were used by the Metropolitan Steamship Company of Maine No. 1 for the freight boats during the time they were operated prior to the starting of the Yale and Harvard? A 9, 10 and 11, North River.

Q What pier was used in Boston? A India Wharf.

Q Do you know what rentals were paid for those piers? A The rentals for 9, 10 and 11, New York, it is one of the few piers, that is, one for private individuals; the rent was about $72,000; we paid a rent and then we paid the bulkhead charge, then we paid taxes and various other things which all take it up to about that amount. At the time Mr. Morse bought the freighters, which is Metropolitan No. 1, a portion of those piers were leased with the New Jersey Central Railroad for somewhere about $45,000, so we cut our rentals about $28,000 from there, when we took that line on, and $40,000 in Boston for India Wharf, and they rented the South side for $10,000, and left the rentals for that line at the time Mr. Morse bought it, $30,000 in Boston, and about $28,000 in New York.

Q At any time after the Harvard and Yale went into service was it possible, either at the New York or Boston end of the line, to rent a

pier for the season during which they operated? A It would be very hard to rent a pier for four months in the busy season of the year.

Q What was necessary to do, and what was done? A I will also say that the Central Railroad of New Jersey gave up that lease in a few months after we took it over and the rental went back to $72,000. By carrying freight and taking freight on the passenger boats and making seven trips a week it relieved the freight boats, so that we could take off one or two boats; sometimes we would have off two and sometimes one, and that gave a berth at Pier 9, North River.

Q At which the Harvard and Yale docked? A Yes, sir.

Q Where did they dock in Boston? A India Wharf, south side.

Q As a matter of fact, did you ever rent a pier just for the summer season? A No, we did not.

Q Always rented them for all the year round? A Yes, sir.

Q How do the pier rentals of piers which would be available for such boats as the Harvard and Yale at the present time compare with the rate of rentals that was in existence at the time these boats went into service? A In New York, Pier 19, which is half a pier, would accommodate them, and we are paying now for that pier $42,000 a year; one-half of India Wharf would accommodate it, and we are paying $50,000 a year for that pier.

Q $50,000 for half a pier? A No, for India Wharf.

Q The earlier rental in New York, which you speak of as being $72,000, that included three

full piers? A No, it is one of their old wharves there and in very bad condition, and it has Pier 9, what we would call a full pier, and Pier 11; Pier 10 is about a third or half; I should say about one-third of a pier, and we used the north side of Pier 9, which is a half pier, at that time.

Q Are pier rentals higher or lower than they were in those earlier days? A The city, which owns the larger number of the piers in New York, gives you a lease for ten years, with the privilege of renewing for ten, and usually an additional rental of ten; we have just renewed the lease on Pier 19 that we have been paying $42,000 for; that is a half pier really on one side, and we are paying an additional rent of $5,000 on that when it begins in May, so that rent there will be $47,000 instead of $42,000.

Q So that they are increasing? A Yes.

Q Is that true of Boston as well as of New York? A The India Wharf and Central Wharf that we rent belongs to what they call the India Wharf Wet Dock Company, and that lease on India Wharf expired about five years ago, and there was an agreement, a clause in the prior lease, that when it was renewed for ten years, there was an additional rent going on; that we had to pay half of the taxes, etc., which brings it up from $40,000 to $50,000, about $10,000 additional. The Central Wharf, we have the south side of it; we pay $32,000 for it.

Q How do wages on steamships in that territory or operating over those lines compare now with what they were in 1907, 1908 and 1909? A Which line?

Q Between Boston and New York. A There has been an increase in the engineers' depart-

ment and in the stewards' department; the captains get the same. I should say in those departments, that I have named, fifteen per cent. increase. On those ships the captains do what we call the victualing; we allow them so much money and they feed the crew. Years ago we allowed them forty cents a day; then we went up to fifty; now we allow them sixty cents; that is on account, as it is termed, of the high cost of living. Coal that used to cost $2, then $2.50, then $3, now it is $3.25.

Q What about the cost of oil; has there been any increase in that during the time I mentioned? A In 1910 we paid 2.2 cents per gallon, now we are paying 3—nearly one cent—$500 a day.

Q Have there been any necessary increases in the number of the crew, owing to any legislation or any other reason? A Originally we carried on our freight ships, the four ships in question, 27 men; I think we are carrying 29 men now; that is in the engineers' department, on account of the union.

Q Do you know whether or not there has been any increase in the insurance rates since 1908 and 1909? A No, the rates today on the Metropolitan freighters is not as high as they were in 1908 and 1909.

Q What has been the decrease? A We had several bad accidents, and a bad accident gives you a bad rating.

Q Has there been any change in the rates on the passenger boats during that time, by way of increase or decrease? A You mean the New York line?

Q Yes. A No, about the same.

*Calvin Austin, cross.*

Q You spoke this morning of the earning capacity of the Massachusetts and Bunker Hill as compared with the earning capacity of the Harvard and Yale, and I think you said that it was less; what did you mean by earning capacity? A I said that—I didn't understand the question. I will say now that the earning capacity of the Massachusetts and Bunker Hill is larger than the Yale and Harvard, owing to the sixty additional rooms, and the capacity is about the same.

Q Did you used to have any difficulty on the Yale and Harvard in renting the staterooms with bathrooms and toilets attached? A No; great call for them.

Q How many passengers would ordinarily occupy a room of that kind? A It wouldn't average over a passenger and a half.

Q If the room was occupied by one passenger would you receive more than one fare? A One fare only.

Q The price of the room was the same, no matter how many people occupied it? A Yes.

Q How many staterooms on the Massachusetts and Bunker Hill occupied the space that was taken up by one of these bathrooms on the Yale and Harvard? A Two.

Q You have gotten in two staterooms where you had one bath on the other boats? A We have two large rooms on each steamer, on the Massachusetts and Bunker Hill, that has a bathroom connected with it.

Q There were how many rooms on the Yale and Harvard that had bathrooms? A Twenty-eight.

Q I want to know how many staterooms you can get in the room that was occupied by one

of those bathrooms? A You can get one room that is occupied by the bathroom, and four rooms that is occupied by the room that connects with the bathroom, and one room and one bath takes the place of five rooms.

Q Five separate rooms? A Yes.

Q How many passengers do each of these rooms accommodate? A These large rooms? It will sleep ten, it has ten berths, the five rooms.

Q Do as many people travel in each of those five rooms on the Bunker Hill and Massachusetts as travel in the one room on the Yale and Harvard that had the bathroom attached? A More.

Q When the Eastern Steamship Corporation was formed in January, 1912, did it pay a lump sum for the properties that it acquired from the Metropolitan Steamship Company and the Maine Steamship Company, or was the purchase price of the properties of each of those companies separate? A Separate.

Q You said this morning in answer to one of Mr. English's questions, that at the end of the season 1910 you had no desire to operate the Harvard and Yale for another year; what was that lack of desire due to? A It is a great responsibility in handling those ships; they run thirty days in the month, make over 300 nautical miles on every trip, and carry 165 in the crew and take care of the class of people that patronize us, listen to the complaints, and have them make the time; it is very hard to get men now to operate those ships.

Q Why is that? A Because the man that has got the ability, the boy that has the ability to grow up who can handle one of those ships,

can get more salary when he is eighteen years old than he would today when he is sixty.

Q Why is that? A Because the steamship companies cannot afford to pay it; they don't pay it.

Q Why not? A They don't earn it.

Q You don't earn it on that service between New York and Boston? A Or any other.

Q How do the Massachusetts and Bunker Hill compare with the Harvard and Yale in their size and appointments and upkeep and general appearance and attractiveness? A The length is the same; the beam, as we term it; the width of the ship is the same, 50 feet; the Harvard and Yale had guards, a five foot guard on each side, and that made ten feet more width on the deck and through the saloons, and that guard is what we term a flaring guard; the hull comes up and flares out and catches onto it; they have more saloon room; they have no more capacity, except for the people to walk around in the saloons.

Q How do the appointments of these present boats compare with the others? A There was not as much money expended on the Massachusetts and Bunker Hill as there was on the Yale and Harvard in the way of fancy finish, but I don't think it would affect in any way the travelling public patronizing it.

Q How do the boats compare in point of comfort with the Harvard and Yale? A Equally as comfortable.

Q You said this morning that the Masachusetts and Bunker Hill didn't stock as large in 1912 or 1913 as the Yale and Harvard did in 1908; what did you mean by that expression? A I mean they didn't earn as much money at the time they were operated; the Massachusetts

and Bunker Hill didn't earn as much while they were operated on that route as the Yale and Harvard did in 1908 while they were operated.

Q Do you have reference to gross earnings or net earnings? A Gross earnings.

Q In your opinion is it possible to operate the Yale and Harvard between New York and Boston at a profit at this time?

*Mr. English.* Objected to; I do not think that is a proper question at all. It leaves out too many factors which ought to be taken into consideration, for Mr. Austin to make an estimate. The situation today and what it was in 1908; six years have intervened, and it already appears in his evidence that the conditions have changed very materially. Before he can answer such question, you ought to cover all the change of factors which have occurred during that six-year period.

Q Leaving out of consideration, Mr. Austin, the fact that the Bunker Hill and Massachusetts have operated between Boston and New York between 1911, 1912 and 1913, in your opinion would it have been possible for the Yale and Harvard to have operated at a profit between those ports in those years; I mean if the Massachusetts and Bunker Hill had not been on the same service during that time?

*Mr. English.* Is the question based on the assumption that there was no intervention in the service and it followed right on, following the traffic season of 1910.

Q Yes, sir, if they had continued in 1911, 1912 and 1913 without the passenger competition of the Massachusetts and Bunker Hill, taking

into consideration all of the charges that would have had to be met by the company, would it have been possible to have operated the boats at a profit?

*Mr. English.* I think that is a question which nobody can answer unless he is a prophet or a seer; he can guess. There are no facts in the record or witness's knowledge, nor are they set up in the question as an assumption upon which he could predicate an answer which would be of any value to such a question as that, and I object to it.

A I understood that to be, to take steamers and run them independently with an independent corporation, and depend on the earnings from those two steamers, the time they would operate, to maintain them for twelve months; is that it?

Q Yes. A That is to form an organization, rent piers at both ends for the year, will they pay eight months out of the year the taxes, interest, depreciation and everything pertaining to it? No.

Q Why not? A They do not earn money enough; cannot earn money enough.

Q Why not? A They haven't the capacity to earn it, provided you get the business.

*Re-direct* by Mr. English.

Q You answered that question by including in your answer what was not suggested in the question, that this was operated by an independent corporation? A Yes.

Q Suppose the Yale and Harvard were part of the Eastern Steamship Corporation's outfit? A If the Eastern Steamship met the bills they would get along.

Q And in your judgment would the Yale and Harvard as a part of the fleet of the Eastern Steamship Corporation make more money for that company than the Massachusetts and Bunker Hill do?

*Mr. Ward.* Objected to as immaterial and irrelevant.

*Mr. Faulks.* I make the same objection.

A That is a hard question to answer.

Q So is the other one, but you answered it. Try and answer it. In your judgment, wouldn't the Yale and Harvard, as a part of the fleet of the Eastern Steamship Corporation, make more money for that company than the Massachusetts and Bunker Hill, having in mind that for the purposes of this question, they would have been in continuous operation since 1907? A Without interruptions or mishaps? Yes, sir.

Q Interruptions or mishaps are likely to happen to any ship? A Yes, but an accident has a tendency to injure your line.

Q Did the Harvard and Yale ever have an accident? A No; I said if they had gone along without any.

Q So they didn't run with the odium of an accident? A They didn't have an accident; they are liable to have one.

Q Assuming in considering this question not only that it did not have, but that they would not have had an accident, wouldn't they have made more money for your company than the Bunker Hill and Massachusetts? A I think if they had continued along and kept well up under good management, with the name that they had, that they would earn more money in 1911, 1912 and 1913 than the Massachusetts and Bunker Hill.

Q Suppose that they had had exactly the management and upkeep and care which the Massachusetts and Bunker Hill had had, wouldn't they have earned more money than those two ships, assuming that they had continued right along from when they started in 1907? A Yes.

Q When you say that the gross earnings of the Massachusetts and Bunker Hill in 1912 and 1913 were not as large as the gross earnings of the Harvard and Yale in 1908, do you mean to say that the net earnings of the Harvard and Yale were not larger? A I cannot remember that. I can remember the gross but I do not remember the exact amount.

Q You don't remember the exact amount, but don't you remember the salient fact of whether the net return of the Yale and Harvard was greater or less than the comparative net return of the Massachusetts and Bunker Hill four or five years later? A The net earnings would depend a good deal on the amount of returns that were put on the ships during the year; I cannot remember it.

Q You know what repairs were made to the Yale and Harvard in 1908; you were receiver operating them. A Yes, but I don't remember what the repairs were on the Massachusetss and Bunker Hill.

Q That was operated by your company? A Yes; I could give it to you down at the office, but I haven't got it in my head.

Q The thing didn't depend entirely on the amount of repairs, did it? A No, but if you spend $25,000 more in one year than you do the next, it would offset it just that much.

*Calvin Austin, re-direct.*

Q You said that the Bunker Hill and Massachusetts had a greater earning capacity? A Yes.

Q You don't undertake to say that they do, in fact, earn more money? A I say when you fill them to the full capacity, on the same routes they will earn more money than the Yale and Harvard.

Q As a matter of fact you didn't fill them? A The capacity means what you can carry.

Q But the net earnings is what you get? A The net earnings wasn't mentioned.

Q It is mentioned now; do you mean to say that the Bunker Hill and Massachusetts did run at their full capacity? A I don't say so.

Q And you didn't intend to say so then? A I say they have a larger earning capacity.

Q What I am after now is, did they, as a matter of fact, run at their full capacity? A Some trips, and some they didn't, the same as the Yale and Harvard.

Q But on the average, as near to capacity as the Yale and Harvard? A They didn't earn as much as the Yale and Harvard; what difference that was, I don't know.

Q So notwithstanding their increased capacity, they didn't earn as much money? A They did not; they didn't get the business.

Q How much did you charge for a room and bath on the Yale and Harvard? A My impression is it was $5, $6 and $8; there were only two that we got $8 for.

Q What was the charge for a room and bath of the size which you have testified occupied so much space as to permit five state rooms on the Massachusetts and Bunker Hill? A $8.

*Calvin Austin, re-direct.*

Q How much did you charge for the five staterooms which in the one set of ships took the place of the eight staterooms and bath in the other set of ships? A $9.

Q $9 as against $8? A Yes.

Q You say there were two rooms in the Harvard and Yale each which had a bathroom attached, for which you charged $8 and $6; so the net difference on that charge was two dollars on each steamer? A I said there were twenty-eight of the rooms on that boat had baths.

Q I am talking about the baths and rooms that were so big that they occupied the space of five ordinary staterooms. A It wasn't the size; it is the location that we charged for.

Q The fact is that there were two rooms with bath on the Harvard and Yale each which occupy the physical space of five staterooms in the other ship? A Yes, and a good many more that occupied the same space.

Q How many staterooms with bath on the Harvard and Yale occupied the space of five staterooms on the other ships? A I think twenty-six.

Q Then regardless of what you charged for them, they occupied as much space as five staterooms on the other ship? A Very near.

Q You could get $9 out of those rooms, if they were rented; is that correct? A That would be for the rooms, but we get more passengers.

Q I appreciate that. You don't undertake to say that every trip of the Massachusetts and Bunker Hill there were five staterooms rented as opposed to one in the other ships, do you? A I don't intend to say it; I say if you rented it all.

Q That is on the "if"? A The whole thing is "if."

Q You have spoken of the great responsibility of running the Harvard and Yale, which you say deterred you from wanting to run them after 1910; is there any greater responsibility in running the Harvard and Yale than the Massachusetts and Bunker Hill? A No, both the same.

Q They were practically the same length and width and size of ships? A Yes, and the same tonnage.

Q And just as much trouble from crews and what not? A Yes, just about the same.

Q There wasn't much choice then on the matter of strain and responsibility from running the Harvard and Yale as opposed to the Massachusetts and Bunker Hill? A I didn't get any additional pay running those. I got the same salary when I operated the freighters as I did when they put on the Harvard and Yale.

Q So that you had the same responsibility when you ran the Massachusetts and Bunker Hill as you did when you ran the Yale and Harvard? A About the same.

Q Is it altogether the fact that you didn't want to run the Harvard and Yale on account of the great responsibility? A I wasn't asked to run them.

Q That is the real reason? A I didn't seek it.

Q Is that the real reason that you were not asked to? A Never gave it a thought.

Q It wasn't suggested to you at all? A No.

Q And you assumed that when the season of 1910 came to an end, that was going to be the

end of the Yale and Harvard? A I didn't assume anything of the kind and didn't know what would become of them.

Q You didn't figure in your mind on running them a second season? A I don't remember that I did.

Q You knew that they were going to be overhauled and sent off to the Pacific coast? A I didn't know it until about fifteen days before they began to get them ready to run.

Q So the question of the responsibility of running them didn't cut any figure with you, one way or the other? A I didn't give it great thought; I wasn't seeking the job there.

Q You didn't give it any thought, did you? A No great thought probably.

Q Is it true that the Massachusetts and Bunker Hill are as comfortable as the Yale and Harvard? A That is my judgment.

Q How many rooms with bath have the Bunker Hill and Massachusetts each? A I don't answer that question that way; I mean when a ship is comfortable and easy going through the heavy sea, that is what we term that.

Q The way she rides in a storm? A Yes.

Q Just as good a sailer? A It has the stability and the standup.

Q And apart from their sea-going qualities, were they as comfortable as the Yale and Harvard for passengers? A Yes.

Q How many rooms and bath did they have? A Two.

Q As opposed to twenty-eight in each of the Yale and Harvard? A Yes.

Q Can't you make twenty-six more people comfortable on the Yale and Harvard than you

could on the Massachusetts and Bunker Hill? A When you come to the point of the comfort for twenty-eight people, we could accommodate twenty-eight people more with bath and rooms than on that boat.

Q So you could make twenty-six more people have comfort on the Yale and Harvard than on the other ships? A If you call that comfort.

Q A nice bath is a comfort? A Yes.

Q Did they have as much deck space to walk around as the Yale and Harvard? A They didn't have as much saloon space.

Q So if your passengers took any comfort in walking around, they didn't get as much on the Bunker Hill and Massachusetts as on the Yale and Harvard? A I never saw it very much crowded on the Massachusetts and Bunker Hill.

Q Make a comparison. A They were ten feet wider.

Q And got ten feet more of wandering space in the saloon to stretch himself that much more? A Under the outside rooms on the Yale and Harvard, and it took three feet on each side, so that took six feet out and gave four feet more in the saloon.

Q Don't you suppose that those elements had something to do with the difference in popularity between the Bunker Hill and Massachusetts as opposed to the Harvard and Yale? A I think the popularity of the Harvard and Yale over the Massachusetts and Bunker Hill was the fact of their names, and their getting a good send-off when they first went into operation.

*Calvin Austin, re-direct.*

Q Did you ever manage any finer boats than the Yale and Harvard? A Equally as good.

Q Any finer, I asked? A I managed the C. W. Morse on the Hudson River; I think that is a little cheaper.

Q That is a totally different kind of boat. I will confine my question to salt water navigation, New England Sound and the ocean. A For a short run, no.

Q Did you ever manage as fine ships between New York and Boston? A Oh, no.

Q The Massachusetts and Bunker Hill for general beauty and superiority and modern equipment, are not in the same class with the Yale and Harvard? A Just about the same, except there is not so much fancy finish in the joiner work as on the Yale and Harvard, and they haven't got as much power and they make nearly as good speed.

Q They wouldn't be classed as handsome and as luxurious steamers? A Not to pass through them.

Q Those two boats, the Bunker Hill and Massachusetts, you said were originally freight boats and overhauled for passenger service. The Harvard and Yale could have been added to so as to increase their capacity for carrying passengers? A No, not to any extent; it wouldn't have been practicable to have done it. They might have added a few rooms.

Q Wasn't that a part of the scheme in contemplation when they were changed to oil steamers, to somewhat increase their carrying capacity? A It was talked over to put some rooms on the freight deck and in the forward part of the saloon, inside rooms; I should not have deemed it practicable to have done it.

*Calvin Austin, re-direct.*

Q How many more rooms would they have added? A I don't remember; possibly twenty-five or thirty.

Q That would have enabled them to carry fifty or sixty more passengers? A Those rooms averaged a passenger and a half, if they were sold.

Q Do you expect to run the Bunker Hill and Massachusetts this coming season, 1914? A As far as I know.

Q Where did they dock in New York in 1913? A Pier 18, North River.

Q Who owns that pier? A Private individuals.

Q Who rents it? A Eastern Steamship Corporation.

Q You spoke of Pier 19 on your cross examination? A That adjoins it, we rent that also; that belongs to the city.

Q Do you know the hour of departure and arrival of the Fall River Line between New York and Boston; half-past five out of New York? A Their train leaves here at six and gets there about twenty minutes past seven, and they get there as soon as they can.

Q So that, roughly, they run between five in the afternoon and eight o'clock in the morning? A That is the schedule we put them under.

Q I talked about the Fall River Line. A They get in about half-past six or seven.

Q I spoke of coming from New York and Boston; they leave at five and get into Boston about twenty minutes after eight? A They run two trains up here, the first train gets you in there about seven o'clock—twenty minutes past; another train comes up later.

*Calvin Austin, re-direct.*

Q The Yale and Harvard left the departing city at five and got in the next port at eight? A From eight to half-past.

Q They ran pretty well on time? A They kept a very good schedule, very near.

Q How about the Bunker Hill and Massachusetts; how do they run? A About the same time.

Q You said the Harvard and Yale were about twenty minutes to half an hour quicker? A I was putting that on a test case, to try the speed.

Q What is the schedule of the Bunker Hill and Massachusetts? A Eight to five, five to eight.

Q And then they come as near to it as they can? A Sometimes they get in at half past eight; the next day, if the tide turns, they get in at half past eight.

Q And usually the water is pretty good in the summer months? A Except fog.

Q You have spoken of the advantage to a steamship of sailing through comparatively smooth water; do they encounter rough water coming between New York and Boston? A You do in the winter trade; I was speaking then of ships in general.

Q But in the summer months, when those passenger steamers operated, they struck comparatively smooth water between New York and Boston? A Yes.

Q Do you know between what ports the Yale and Harvard operate on the Pacific coast? A Between San Francisco and Los Angeles; I haven't been there.

Q That is a longer route than between New York and Boston? A It is three or four or

five hundred nautical miles between New York and Boston, the way we run; they wouldn't hold the same course; my impression is about three hundred and sixty out there.

Q Three hundred and sixty or five hundred and sixty out there? A It may be five hundred and sixty.

Q And they encounter rougher water there on the ocean than they do on the route between New York and Boston?

*Mr. Ward.* I object.

A I cannot answer that.

Q Mr. Austin, these three boats, the Massachusetts and Bunker Hill and Old Colony, were originally designed as freight boats? A Built for that.

Q Were they too expensive boats to successfully operate as freight boats? A I didn't have anything to do with them while they were operating them; I didn't know what their earnings were or what the expenses were.

Q From your knowledge of ships and shipping, it is practicable to operate such expensive and fast boats in the freight line successfully where there is competition? A To run those fast boats there to get in early in the morning, it has a great advantage on our short route over a slow ship.

Q I am talking about the freight service. A So am I.

Q Do you know whether those three boats when they were operated purely as freight boats, paid? A I know they put the Metropolitan out of business very fast.

Q You don't know whether they lost money? No.

Q They were put on to compete with the Metropolitan? A I understand so.

Q Who put them on to compete? A I don't know.

Q What line operated them at the time they were competitors? A New England Navigation Company.

Q They were put on by the New England Navigation Company? A They operated them.

Q And they operated as competitors of the Metropolitan Steamship freight line? A They were competitors.

Q Then they operated them as though they were in fact competitors? A Yes.

Q Between Boston and New York? A Yes.

Q What cut into the freight receipts of the Harvard and Yale? A Four freighters more.

Q How long, to your knowledge, were they operated by the New England Navigation Company? A January, 1908, until March 19th, I think, I looked that up, 1910.

Q Then the season of 1910 they were being overhauled for passenger service, sometime between 1910 and the spring of 1910? A They went out of active competition with the Metropolitan line in March, 1910.

Q How long would it take to overhaul those ships from freight to passenger ships? About a year? A No, about six months; that depends on the amount of men that work on them.

Q You have spoken of troubles that you had with firemen shoveling coal; when you put oil in, all those troubles melted away? A Yes.

Q So when the Yale and Harvard ran as oil burning boats, you didn't have that trouble? A No.

Q And they did operate as oil burning boats during the season of 1910? A Yes.

Q You said in answer to Mr. Faulks' question "We paid $179,000 to put in the equipment to enable the Harvard and Yale to burn oil fuel;" when was that equipment put in?

*Mr. Faulks.* He didn't say that.

Q When was this change made of the Yale and Harvard from coal to oil burning steamers? A Spring of 1910.

Q It would be in time to operate them for the summer season of 1910? A Yes.

Q Do you know when that work began? A That work was contracted for under Mr. McKinnon's administration.

Q As operating or as president of the Metropolitan Company of New Jersey? A Yes, sir.

Q And it was completed by whom? A By me.

Q As president of the Metropolitan of Maine, No. 2? A No, as manager from March 5th until I was made president of the Maine Company No. 2.

Q You were manager of that company before you were president of it? A Yes, sir.

Q When did you first become manager of the Maine Company No. 2? A March 5th.

Q At whose request did you become manager? A Mr. Robbins'.

Q E. D. Robbins? A Yes.

Q Were you paid a salary as manager? A I should have to look that up.

Q You don't remember that? A No.

Q How much money was paid out for that change of equipment which was completed in time to run the boats for the season of 1910? A There was $179,000 paid; I should say about

$50,000 of it went for changing to oil fuel, and it cost about $22,000 for condenser tubes and raw material; how much more it took to put them in, I cannot say, but then the general overhauling and various other things; I can give the itemized bill, if you wish.

Q The general overhauling is what the ships always got in the spring? A Yes.

Q Were these condenser tubes made necessary by the oil burning condition? A No, the condenser tubes went back on us and they had to be retubed.

Q Who put up that $179,000? A I don't know as it was put up.

Q Your reply to Mr. Faulks' question was "We paid $179,000?" A The company paid—it was paid.

Q Are you personally acquainted with the fact of the payment? A No.

Q Do you know where the money came from? A No.

Q When was it paid? A I think Fletcher's claim was paid by installments as it was earned; that is to the best of my impression.

Q Paid by the Metropolitan of Maine, No. 2? A Yes.

Q How was the rest of the money paid? A Fletcher, as I remember, assumed the whole thing; I think Mr. McKinnon arranged for them to do all the work, and in case the ships were docked or cleaned, and he had it done, and he would pay the dock bill, and made him general contractor.

Q How much was he paid, or aren't you sure about that? A I am not sure about that; I cannot verify it.

Q When you say that Mr. Robbins asked you to act as manager of this company before you

became either a director or president, in what capacity was Mr. Robbins then purporting to act? A I don't know.

Q Did you inquire? A No.

Q Where was that conversation held? A I don't know.

Q By phone or face to face? A I don't know.

Q All you do remember is, he said, "Will you act as manager of this company," or words to that effect? A He asked me if I would come over and take charge of these ships and get them ready for sea.

Q And you said you would? A I did.

Q Did you make any inquiry as to why he asked you that, or in what capacity? A No.

Q You spoke of the rate of insurance of the boats, which you said was five per cent. on the freight boats; they were incurred at that rate when they belonged to the Metropolitan Company of New Jersey? A I don't know.

Q Your knowledge is confined to while they were in the Maine Company No. 2? A Yes; I didn't suppose that they would get any less rate than they had previous to their going into that company.

Q You spoke of deterioration; isn't it true that the Harvard and Yale were steel ships, steel hulls? A Yes, all modern ships today are steel.

Q They do not deteriorate as readily as some other kind of ships? A Yes, sir.

Q Just as bad? A Yes, sir.

Q Suppose they were laid up in dock, would they deteriorate as much as some other kind of a ship might? A Fully, unless they were taken out twice a year and scraped and cleaned.

*Calvin Austin, re-direct.*

Q They were in fact treated that way? A We always docked our ships in the spring and clean them, and usually have a chance to do it three or four times during the year; we sometimes have occasion to take them out during the season; if we had an accident and she was cleaned and docked, we would clean and paint them.

Q Do you know a company called the Eastern Securities Company? A I know there is such a company.

Q Have you any interest in it as a stockholder? A Not in the slightest, in any shape or manner.

Q Does the Eastern Steamship Corporation have any interest in it? A No, sir.

Q Do you know under the laws of what state it was incorporated? A The home office is in Augusta; I imagine it is a State of Maine corporation.

Q Did you know in his lifetime Governor John F. Hill of Maine? A Very well, indeed.

Q Was he a director of your Eastern Steamship Corporation? A He was.

Q Was he interested in any railroads, do you know? A He was a director in the Maine Central.

Q Was he in Boston & Maine, do you know? A I cannot answer that.

Q You were here when Mr. Stone testified this morning? A Yes.

Q You remember that he said that you were the financial man of the Maine Company No. 2; in view of that statement, do you want to make any change in your testimony of this morning, that you were not the financial man and that he was? A I don't want to make any changes in it.

Q You do not think you were the financial man? A No.

Q And he says he wasn't. Who was? A In the Maine Company No. 2?

Q Yes? A There wasn't any money changed hands except what we earned and paid out, and that was done through the treasurer.

Q You didn't need any financial man? A No.

Q It appears that you became a director of the Maine Company No. 2 March 22, 1910, and you became president shortly after; the evidence already is that the Union Wharf was purchased by the Metropolitan of Maine No. 2, by a deed executed June 17, 1910; did you know of the purchase of that property? A No, sir.

Q You didn't know that it was going to be purchased, until after it was purchased? A My best judgment tells me that property was purchased before I was made a director.

Q The evidence is to the contrary; the record is to the contrary. So you have no knowledge of its purchase after you became president? A If I see the record, it might refresh my memory.

Q The deed is in evidence, Exhibit C. 55? A When, the date of it?

Q It is dated June, 17, 1910; is that when it was made or recorded?

*Mr. Ward.* It does not appear, so far as I know, when it was recorded. The date of record does not appear, so it couldn't have been recorded before it was dated.

A The record might refresh my memory; I don't remember anything about it.

Q Have you any knowledge of the sale of the Union Wharf by the Metropolitan Maine No. 2

to the Maine Steamship Company? A No, I have not.

Q But when your Eastern Steamship Corporation took over these properties in January, 1912, it acquired the Union Wharf from the Maine Steamship Company? A Yes, sir.

Q So it must have changed hands sometime in that interval? A Yes.

Q Can you remember any more clearly any conversation you had with Mr. Robbins other than you told us? A No, sir.

Q If we should call Mr. Robbins as a witness, have you any objection as president of the Maine Company No. 2, to his testifying in whatever relation of counsel he sustained to your company? A Not the slightest.

Q So far as his pleading any privilege as counsel for the Maine Company No. 2, you as president have no objection to waiving that for him, as far as you are concerned or your company? A Perhaps I don't understand your meaning on that. "Waiving" is a technical term.

Q You know a lawyer sometimes pleads that he ought not to testify, because he has a privilege the client can excuse him from if he wants to. You say that Mr. Robbins appeared as attorney for the Maine Company No. 2, of which you were president. I am asking you if we call Mr. Robbins as a witness, will you, as president of that corporation, for which you say he was counsel, have any objection to permitting him to testify to what he knew? A Nothing that I have said today would I object to it.

Q Does Mr. Hight represent the Maine Company No. 2? A No, he represents me.

*Calvin Austin, re-direct.*

Q What is the home port of the Eastern Steamship Corporation's ships? A Portsmouth, New Hampshire.

Q Where does the Eastern Steamship Corporation pay taxes as the home of the company? A Eliot, Maine.

Q Is Eliot the home of former Governor Hill in his lifetime? A I don't know.

Q You have spoken of the difficulty in getting wharves at various ports; how did the Eastern Steamship Corporation get its wharves over in Boston first? A The Eastern Steamship Corporation when they were put together, we had Foster's Wharf, the south side of India Wharf, Commercial Wharf, and then when we took the Metropolitan over, it gave us the India Wharf, and then when we took that property over, we inherited Union Wharf, that gave us that wharf; since, we have got rid of Commercial Wharf and leased Central Wharf.

Q What about New York now? A Metropolitan had Piers 9, 10 and 11.

Q Did you get those when you put your Eastern Steamship Corporation together? A That came with the Metropolitan Steamship Company, Piers 9, 10 and 11. In 1907 the city notified the owners they were going to improve those properties, widen the street, and we were ordered to vacate and went up to Pier 45, which was leased by the Clyde Steamship Company; I being president we could go in there.

Q How long did you stay there? A They stayed there until the latter part of 1907 or the first of 1908, and then we went up to what we call the Chelsea Pier, the new pier somewhere around 58, and stayed there a spell, and then it passed out of my management, and they went

over to the East River and floated back to Piers 14, 9 and 11. We went to Pier 14; Pier 14 burned in July, and we went back to 9, 10 and 11.

Q In what year did Pier 14 burn? A July, 1910.

Q Who owned Pier 14? A The City of New York.

Q Who had the lease of it? A New England Navigation Company.

Q Do you know how long prior to that the New England Navigation Company took a lease of Pier 14? A No, not very long.

Q And the Harvard and Yale docked at Pier 14 during the season of 1910? A Until it burned in 1910.

Q Do you know what other ships or boats docked at Pier 14 previous to the fire in 1910? A Foreign ships.

Q How long to your knowledge prior to that date had the New England Navigation Company had a lease on Pier 14? A It would be guess work; I cannot say.

Q Do you know what became of that lease, whether they have it yet? A They have it yet.

Q The Fall River boats leave from Pier 14 now? A Yes.

Q Do you know who owned the dock or pier that the Metropolitan boats tied up to in the East River? A No.

Q Do you know who had the lease of it? A No.

Q The Providence Line comes into Pier 14, North River, now? A Yes; they have 14 and 15.

Q And both of those lines are operated by the New England Navigation Company? A Yes.

*Calvin Austin, re-direct.*

Q Mr. Austin, you were subpoenaed to produce the books and records of the Eastern Steamship Corporation showing the names of the stockholders of the Eastern Steamship Corporation, have you got that book? A Mr. Hight has it.

*Mr. English.* Mr. Hight, have you got them.

*Mr. Hight.* I have produced a list of the books?

(List produced and handed to Mr. English.)

Q You remember with reference to the appraisal of the Union Wharf that you had some correspondence with Mr. E. D. Robbins about the matter? A I don't remember having any correspondence with Mr. Robbins; I think Mr. Fessenden called my attention to it and I told him I didn't have any charge.

Q Do you remember you wrote a letter to Mr. Fessenden, or two letters? A It is possible.

Q I show you a letter which is in evidence as Exhibit C. 81, which you wrote to Mr. Fessenden; do you remember writing that? A I probably did.

Q Do you remember that there was attached to the letter, which you sent to Mr. Fessenden, a letter from Mr. Douglas Nicholson to Warren D. Chase and a letter from Edward D. Robbins to you enclosing the letter of Nicholson to yourself, do you remember that? A I don't remember; it is all true, I imagine.

Q Then do you remember that in October, 1910, Mr. Fessenden evidently forgot that you had written the first letter and asked you for

another, and you sent the letter C. 92 in evidence; do you remember that now? A I don't remember it, but I imagine I wrote it. I know the matter came up.

Q And I see that in the letter C. 92 you wrote to Mr. Fessenden that you were addressing him because you had received a letter from Mr. Robbins, asking you to write him; do you remember receiving that letter from Mr. Robbins, which you mentioned in your letter? A I don't remember so; if I said so in Mr. Fessenden's letter I probably got one from Mr. Robbins.

Q So isn't your recollection refreshed now that one of the reasons at least why you made no charge; certainly the reason why you wrote to Mr. Fessenden was because you were requested to do so by Mr. Robbins? A He may have requested me to write the letter, but he didn't request me to make any charge; I didn't give ten minutes' time to it, and there wasn't any charge.

Q Isn't it true that you wrote the letter to Mr. Robbins? A If he wrote me and requested me, yes.

*Mr. English.* The witness, through his counsel, produces a typewritten list of the stockholders of the Eastern Steamship Corporation of February 7, 1914. It is stipulated and agreed that the typewritten list which is produced has the same force and effect as the original books, and that the list shows that the following persons owned the following shares of stock:

Calvin Austin, India Wharf, 1,401 shares of the common stock.

Eastern Securities Company, Augusta, Maine, 8,500 shares of the common stock.

John F. Hill, Inc., 136 State street, Augusta, Maine, 4,811 shares of common stock and 2,030 shares of preferred stock.

John E. Liggett, 34 Green street, Augusta, Maine, one share of common stock, and the New England Navigation Company, New Haven, Connecticut, 20,000 shares of common stock and 15,000 shares of preferred stock, out of a total of 67,500 shares of common stock and 30,000 shares of preferred stock.

It is further stipulated that the 8,500 shares of the common stock held by the Eastern Securities Company of Augusta, Maine, represents the stock which was issued by the Eastern Steamship Corporation in January, 1912, as part of the purchase price of the freight ships and other property then acquired from the Metropolitan Steamship Company of Maine, No. 2, and that the 20,000 shares of common stock and the 15,000 shares of preferred stock now held by the New England Navigation Company of New Haven, Connecticut, represent the stock issued by the Eastern Steamship Corporation in January of 1912, in payment of the ships, wharves and other property thus acquired by it from the Maine Steamship Company. Is that satisfactory to you?

*Mr. Faulks.* While I have entered into this stipulation, I have done so with the understanding that we object to this evidence as being irrelevant, immaterial and incompetent under any issue in this case.

*Mr. Ward.* Pacific Navigation Company in making the stipulation reserves all objections to materiality, competency and relevancy of the evidence.

Q Have you any objection to having it appear what your stockholdings in this Eastern Steamship Corporation are? A No, sir.

*Re-cross* by Mr. Faulks.

Q This stock that you hold in the Eastern Steamship Corporation is your own stock? A Yes, sir.

GALEN L. STONE, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A Brookline, Massachusetts.

Q Do you live in the State of New Jersey? A No.

Q What is your business? A Banker.

Q Connected with what firm? A Hayden, Stone & Co.

Q For how long? A Since its organization in 1892.

Q What is the business of Hayden, Stone & Co? A Bankers.

Q Are you a director of any corporations? A Yes.

Q What, please? A Do you want to name them all?

Q Some of them, particularly the transportation companies? A Eastern Steamship Corporation.

Q Transportation companies only? A Atlantic, Gulf, West Indies and affiliated corporations, Clyde Steamship Corporation, New York

and Cuba Mail Steamship Company, the Mallory Steamship Company and the New York and Porto Rico Steamship Company; do you want some others?

Q Any steamship companies operating in New England waters besides the Eastern Steamship Corporation? A Boston and Yarmouth Steamship Company.

Q Prior to the formation of the Eastern Steamship Corporation, which I understand was in January, 1912, what steamship companies operating in New England waters were you connected with? A I was a director of the Metropolitan Steamship Company.

Q Incorporated under what state, Maine? A I think so.

Q And that company, it already appears, was incorporated about March, 1910, or thereabouts? A I don't know.

Q When did you become a director of it? A As well as I can recollect, in the middle of the summer of 1910.

Q Had you ever been connected with the predecessor, Metropolitan Steamship Company of Maine, which afterwards went in the hands of the receivers? A No.

Q Were you prior to the summer of 1910 connected with the Metropolitan Steamship Company, a corporation of New Jersey? A No.

Q In 1910 when you became a director of the Metropolitan Company of Maine, No. 2, were you a director of any other steamship lines operating in New England waters? A Eastern Steamship Company.

Q And that operated from Boston towards Portland? A Yes.

Q Anything else that you can think of? A I don't recall any others.

Q Were you a director—speaking of that same time—in any transportation lines other than steamship lines or water lines? A I do not recall that I was.

Q Connected with any railroads? A No.

Q Are you at the present time director of any railroads? A No, sir.

Q When you became a director of the Metropolitan Company of Maine No. 2, who were your co-directors on the board? A As well as I can recall, Mr. Calvin Austin, Mr. James Dean, Harold Williams.

Q Mr. Case, do you remember him? A Yes; I don't remember whether he was a director and officer.

Q Were you a stockholder of this Maine Company No. 2? A Of record, yes, sir.

Q To what extent? A I shall have to refer you to the records of the company for that.

Q Were you a considerable stockholder? A No, a nominal stockholder, possibly one share; just a qualifying share.

Q Was that given to you for the purpose of qualifying you as a director? A Yes.

Q You didn't pay for it yourself? A No.

Q At whose request did you become a director of the Maine Company No. 2? A Either at the invitation of Mr. Edward D. Robbins or Mr. Calvin Austin, or both; I don't recall that.

Q Who was Mr. Edward D. Robbins that you named? A He represented himself as the owner of this company. Excuse me, I will correct that; he represented that he represented in turn the owners of the company.

Q He represented that he represented the owners of the company? A Yes; he claimed to represent the owners of that company.

Q And in that capacity he invited you to be a director? A Yes.

Q Did he say who the owners of the company were whom he represented? A He did not say who they were, but he did say who they were not.

Q We don't care who they were not; we are only concerned as to who they were. Did you ask him who they were, or did he volunteer the information which he gave you? A I do not remember.

Q So you were satisfied, on his invitation, to become a director without going into the matter further? A Yes.

Q Did you, as a matter of fact, know who the owners were? A No, sir.

Q And you never inquired? A No, sir.

Q And you never learned? A No, sir.

Q Do you know who was the principal stockholder of the Maine Company No. 2? A No, sir.

Q At the time you became a director of the company? A No, sir.

Q Do you know the extent of the stockholdings of your co-directors beside yourself? A No, sir.

Q And you never inquired about that? A No, sir.

Q Mr. Austin was the president of that company, was he not? A I believe he was.

Q And Mr. Birdsey E. Case was the treasurer? A As well as I can recollect, yes, sir.

Q Did you ever attend a stockholders' meeting of the company? A No, sir.

*Galen L. Stone, direct.*

Q You attended directors' meetings? A Yes, sir.

Q When there was a stockholders' meeting, you gave a proxy? A I don't remember that I was asked for one.

Q Is that company still in existence as a corporation? A I don't know.

Q When did you cease being a director? A May I ask Mr. Hight as to about the time?

*Mr. English.* Yes.

A (Continuing.) I should say about the latter part of the year 1911 or the first part of 1912.

*Mr. Hight.* Your question may involve a question of law.

*Witness.* I don't remember the exact dates.

*Mr. Hight.* The Eastern Steamship Corporation was organized in January, 1912. The Metropolitan continued nominally and was excused from filing returns, on the ground that its franchise was disused sometime later.

Q Mr. Hight, to whom you apply, is your present counsel? A Yes.

Q Are you a director of any banks? A In Boston?

Q Yes. A Yes.

Q First National Bank? A Yes.

Q Who is the president of that? A Mr. Daniel G. Wing.

Q Can you give us the names of any of your co-directors in the First National Bank with reference to 1910? A I was not a director at that time.

Q When did you become a director? A In the latter part of 1913.

Q Were you a director in 1910, when you became a director of the board of the Maine Company No. 2? A Yes, I was a director of the Beacon Trust Company, of the Old Colony Trust Company; I do not recall any others.

Q Was there an executive committee of the directors of the Maine Company No. 2? A I do not recall.

Q Do you know how frequently the board held meetings? A Every month.

Q Did anybody outside of the membership of the board attend those meetings? A I do not remember that they did.

Q Did Mr. Robbins, who asked you to be a director, ever attend?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A I do not remember.

Q When Mr. Robbins asked you to be a director, did you ask him why he asked you? A I cannot answer that question exactly as you put it, but I understood because of my friendship for Mr. Austin; because of our friendly relations with Mr. Austin.

Q You say you are a director of the Eastern Steamship Corporation? A Yes.

Q Did you participate in the negotiations which led up to the formation of that company? A Yes.

Q Who else participated in those preliminary negotiations? A On behalf of the Eastern Steamship Corporation I was in constant consultation with Mr. Austin, and on behalf of others with Mr. Robbins.

*Galen L. Stone, direct.*

Q Who was it that Mr. Robbins represented in that transaction? A I do not know.

Q What interests were acquired in connection with that matter?

*Mr. Faulks.* I object to the use of the word "interests."

A I have no statement as to what property; the stock was acquired.

Q What property was acquired? A As well as I can recall, we purchased the business of the Eastern Steamship Corporation—agreed to purchase the Metropolitan Steamship Company's business, its physical property, its current assets, and assume its current liabilities.

Q What else, what other property? A I think that is all.

Q That was all of the Metropolitan Maine No. 2? A Yes, sir.

Q Did you acquire the properties of any other corporation? A The Eastern Steamship Corporation?

Q Yes. A Yes, the Eastern Steamship Corporation bought some property of the Maine Steamship Company.

Q And that was a corporation of what state, do you know? A I don't know.

Q As representing what property owners did Mr. Robbins appear in the matter?

*Mr. Faulks.* I object to that as calling for a conclusion on the part of the witness.

Q You say that you and Mr. Austin represented the Eastern Steamship Company in the matter? A The Eastern Steamship Company and the proposed Eastern Steamship Corporation.

New Jersey State Library

Q And the third person in the transaction was Mr. Robbins? A Yes.

Q What property or interest did Mr. Robbins represent? A I do not know.

Q The only thing left to represent was the property of the Metropolitan Company No. 2 of Maine, and the Maine Steamship Company, isn't that true?

*Mr. Faulks.* Objected to as calling for a conclusion on the part of the witness.

A Let me answer it, if I may; he offered to sell us some property and we agreed to buy it for the Eastern Steamship Corporation which we proposed to organize if he would give us a good title to the property.

Q And when you say "he," you mean Mr. Robbins? A Yes.

Q That is Edward D. Robbins? A Yes.

Q Do you also know him as general counsel of the New Haven? A I believe he was at that time.

Q What was the property which Mr. Robbins offered to sell to you, which you agreed to buy if you could get a good title? A The property of the Metropolitan Steamship Company of Maine, as I have described it, and five steamships and the equity in two wharves of the Maine Steamship Company.

Q And your negotiations therefore were with reference to what valuation should be placed on that property and the state of the title and matters of that character? A Yes.

Q You looked throughout to Mr. Robbins as the man who could deliver the goods? A Yes.

Q And he delivered the goods? A Yes.

Q And the Eastern Steamship Corporation got the property? A Yes.

Q What did he pay for it?

*Mr. Faulks.* I object to this question, or any evidence with reference to the purchase price paid by the Eastern Steamship Corporation for the properties mentioned, as having no bearing on this suit, as being incompetent under any issue involved here.

*Mr. Ward.* Let it be understood that I object to this testimony of facts and happenings after October, 1910.

Q Was there a segregation, for the purpose of payment, of the property of the Maine Company No. 2 as opposed to the property of the Maine Steamship Company, or was it all one lump deal? A There were two distinct payments.

Q What was paid for the property which was taken over from the Maine Company No. 2, the Metropolitan? A The Eastern Steamship Corporation agreed to deliver its five per cent. mortgage bonds in the amount of $1,700,000 par value and 800 shares of its common stock.

Q You have said, Mr. Stone, you took over the assets and the liabilities of that Maine Company No. 2? A Yes.

Q What were the liabilities? A I cannot answer your question; they were not large in amount. The current liabilities of the business, if I may guess, I should say possibly—

*Mr. Faulks.* You ought not to guess if you don't know.

Q They were the debts occured in operating and that character of debt? A Yes, the ordinary operating liability.

Q And the boats which that company operated were four freight steamers and car floats?

A Its four freight steamers and some similar equipment, I cannot describe it to you or recall it.

Q When you became a director of the Maine Company No. 2, was there brought to your attention the existence of the contract between the Metropolitan Steamship Company of New Jersey and the Metropolitan Steamship Company of Maine No. 2, which is an exhibit in this case as No. C. 98, relating to the operation of the steamships Harvard and Yale by the Maine Company No. 2? I show you the contract. A I do not recall that I ever saw that. (Examining contract.)

Q Did you know that the Maine Company No. 2 did in fact operate the Harvard and Yale during the summer of 1910? A Yes.

Q When did they cease operating those steamers, to your knowledge? A As well as I can recollect, September 1910.

Q Do you know what became of the Harvard and Yale after they ceased to be operated by the Maine Company No. 2? A No.

Q Did you ever hear that they finally fetched up on the Pacific coast? A Yes.

Q Did you know that they were going to be sent there before they were in fact sent? A Only as a matter of current gossip.

Q The matter never came before the Board of Directors of Maine No. 2? A Not so far as I can recall.

Q You understand when I say Maine No. 2, I mean the Metropolitan Steamship Company of Maine, of which you were a director, the second company of that name, incorporated under the State of Maine? A Yes.

Q Did you ever discuss with anybody the contemplation of the sending of the Harvard and Yale to the Pacific coast before they were sent? A No.

Q Did you ever discuss the matter after they were sent? A In my capacity as a director of the Metropolitan Steamship Company? 10

Q Yes. A Not in my capacity as a director of the Metropolitan Steamship Company.

Q What about your unofficial capacity?

*Mr. Ward.* Objected to as immaterial.

*Mr. Faulks.* I join in that objection.

Q Did you ever discuss it? A Yes.

Q With whom did you discuss it? A I cannot remember; with many.

Q Did you ever discuss it with Mr. Austin? 20 A Possibly.

Q Did you ever discuss it with Mr. Robbins? A I think not; I do not recall; I think not.

Q When you became a director of the Maine Company No. 2 did it own the Union Wharf in Boston, or was that acquired after you became a director—the Metropolitan Steamship Company No. 2 of Maine? A I don't know.

Q You do know that that company owned that property, don't you, that Union Wharf, that 30 already appears as a fact in this case, that the Union Wharf in Boston was owned by the Metropolitan Steamship Company of Maine No. 2, having been conveyed to it or from the Metropolitan Steamship Company of New Jersey? A That was my general knowledge; I don't recollect the time of conveyance.

Q You don't remember whether that was acquired after you became a director or before? A I do not recall. 40

Q It appears in this case that the Metropolitan Steamship Company of Maine No. 2 sold that same wharf to the Maine Steamship Company; do you remember that fact? A No, sir.

Q Who was it that attended to the sale of the property, if you know, speaking of the Union Wharf in Boston? A I never knew of any transactions with the Union Wharf in Boston, except when the Eastern Steamship Corporation acquired it.

Q And from what company did the Eastern Steamship Corporation acquire it? A I am unable to recall whether from the Maine Steamship Company or the Metropolitan Steamship Company.

Q It appears that it came from the Maine Steamship Company? A I am unable to recall either one of those two companies, if I may answer that way.

Q And if it was acquired from the Maine Steamship Company, you have no recollection how it ever got out of the ownership of the Metropolitan Maine No. 2? A I never had any knowledge of that.

Q Did you ever attend any meeting of directors where the transfer of that property was discussed or authorized? A Not that I can recall.

Q You attended all the directors' meetings that were held? A As well as I can recall, during my term as director, I attended every meeting.

Q Were you ever a director of the New Haven Railroad? A Yes.

Q When? A From November, 1913, until February, 1914, as well as I can recall.

Q Had you ever been a director of the New Haven prior to November, 1913? A No.

*Galen L. Stone, direct.*

Q Who was the man who operated the Metropolitan Steamship Company, the Maine No. 2 to which you referred? A Mr. Austin.

Q And who attended to the finances of that company? A Mr. Austin, as far as I know.

Q What officer of the company, so far as you know, had authoriity to sell the real estate of the company; for example, the Union Wharf, if any?

*Mr. Faulks.* I object; the records of the company will show.

A I don't know.

Q You became a director of that company about the time that Mr. Austin was made president? A I don't know when Mr. Austin was made president, but subject to Mr. Hight's correction, I should like to fix the date about July, 1910.

*Mr. Hight.* I think it was earlier; I think it was the latter part of March.

*Witness.* Possibly I do not recall. I will make an answer that I became a director in 1910.

Q Of the Maine Company No. 2? A Yes.

Q Starting from the time when you were the director in March, 1910, do you know of the purchase by the Metropolitan Company No. 2 of the Union Wharf, which from Exhibit C. 55, already in evidence, appears to have been made on the 17th day of June, 1910, by a deed executed on that date by the Metropolitan Steamship Company of New Jersey and the American Trust Company? A I am unable to recall that transaction.

Q Will you say whether or not the purchase of that wharf was discussed in the Board of

Directors of the Maine Company No. 2? A I am unable to answer it.

Q Can you state what was paid for the purchase of that wharf? A I do not recall.

Q Do you know where the money came from which paid for the wharf? A I do not recall.

Q This deed recites a consideration of $350,000 (C. 55); have you any knowledge of your company, Maine No. 2, having paid that sum of money to the Metropolitan of New Jersey for that property? A I do not recall.

Q You have no knowledge of it? A No.

*Mr. Faulks.* He doesn't recall the transaction at all.

Q Who was the fiscal agent of the Eastern Steamship Corporation at the time it was incorporated? A I don't know.

Q Or rather the time it took over this other property? A I don't know that it had any fiscal agent.

Q Who attending to the financing of it? A I did.

Q And previous to that you had financed the Eastern Steamship Company? A As a director, yes, sir.

Q Did you also finance the Metropolitan Steamship Company of Maine No. 2? A No.

Q Or the Metropolitan Steamship Company of New Jersey? A No.

Q Do you know who did finance those companies? A No.

Q At whose suggestion, if you know, did the Eastern Steamship Corporation acquire the property which it did acquire of the Metropolitan of Maine No. 2 and the Maine Steamship Company? A At my suggestion.

Q Why did you make that suggestion? A I believed at that time that if the Eastern Steamship Company would acquire that property and at the same time the property of the Eastern Steamship Company it could operate them all to a very decided increase in profit.

Q So you expected to operate from New York clear on east beyond Portland? A Yes.

Q At the time that the Eastern Steamship Corporation was formed—I don't mean the month of January necessarily, but about that general time, was there any passenger service between New York and Boston during the summer months?

*Mr. Faulks.* What year?

Q Let us say in 1911, the year preceding the formation of the Eastern Steamship Corporation? A As well as I can recall, there was.

Q Do you know the names of the ships which operated in that service? A As well as I can recall, the Massachusetts, Old Colony and Bunker Hill.

Q And after your Eastern Steamship Corporation took over these properties, did they continue to operate the same line; had you been familiar with the operation of the service between New York and Boston by the Metropolitan Steamship Company of Maine No. 1, which afterwards went into the hands of receivers, with the steamships Harvard and Yale? A Not in any special way, only as I happened to accidentally see reports.

Q You know, of course, that the receivers, of which Mr. Austin was one, continued the operation of that line? A Yes.

Q Of course you know that your Maine Company No. 2, of which you were a director, oper-

ated the Harvard and Yale during the summer of 1910? A Yes.

Q Do you know roughly what the figures were, the gross receipts of the Harvard and Yale during the summer of 1910, when your company operated them? A No, I do not.

Q Do you know what the net receipts were? A No.

Q Have you, from an examination of the reports or otherwise, any knowledge upon which you can make a comparison of the gross earnings of the Harvard and Yale, as compared with the Massachusetts and Bunker Hill which afterwards operated between New York and Boston?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A I cannot testify from my recollection as to those figures.

Q But there are figures to be had? A I presume so.

Q Are you able to say from your knowledge of those figures, roughly, whether the Harvard and Yale made more money, let us say, than the Bunker Hill and Massachusetts?

*Mr. Faulks.* I object to that as being entirely too indefinite; there is no evidence showing that the witness has any qualification to testify as to this matter, and he disclaims any knowledge or recollection of any definite figures; a guess or statement on his part as to the matter will be of no value to any one. I also object on the ground that it is incompetent and immaterial.

A My knowledge is not sufficiently accurate to permit me to answer that.

*Galen L. Stone, direct.*

Q How long have you personally known of the existence of the steamships Massachusetts, Old Colony and Bunker Hill? A At least three years.

Q When you first knew of them, by what line were they operated? A I don't know.

Q Were they operated by any lines which you were a director of or interested in? A No.

Q Can you remember whether they were operated by the Hartford & New York Transportation Company? A I don't know.

Q You don't know that? A No.

Q You only know they were operated by some interests? A Yes; it is generally known that they were operated under the name of the Merchants Line.

Q Do you know who owned the Merchants Line? A I don't think that was a corporation, simply a trade name.

Q Do you know who the person was who did business under that name of the Merchants Line? A No.

Q Have you any knowledge of the fact that those three ships were overhauled at considerable expense to make them available for passenger traffic? A I am unable to testify to that unless you bring your question forward to later than January, 1912.

Q They were overhauled after that date? A After they were purchased by the Eastern Steamship Corporation large amounts were expended on the Massachusetts and Bunker Hill.

Q To increase their passenger capacity? A In part.

Q Did you know as a matter of fact that there had been previous to that very large sums

of money spent in making them into passenger steamers? A No, sir.

Q At the time you took them over in the Eastern Steamship Corporation, you knew that they were operating as passenger steamers, did you not? A They were equipped to operate as passenger steamers.

Q In taking them over did you consider the necessity of spending more money on them to make them further available for that purpose? A Yes.

Q Did you look into and ascertain their original cost in figuring out that transaction? A Yes.

Q Do you remember what that cost was? A No, sir, I do not.

Q Did you also ascertain that prior to the time that the Eastern Steamship Corporation took them over, that they had been changed from freight boats originally into passenger boats? A I think I may answer yes to that.

Q Did you at that time learn who had made that? A No, sir.

Q Did you ascertain how much money had been spent for it? A No, sir.

Q Nor who had paid the money? A No, sir.

Q What sort of an investigation did you make on that, an independent examination or just ask someone? A Mr. Austin; I relied on Mr. Austin's judgment; he made a very careful study of the boats, in the course of some visits to which boats I accompanied him.

Q Mr. Austin sized up the boats as he saw them, but did you ascertain from any previous owners how much they had spent on them? A I don't recall that I did.

Q Did you inquire anything of Mr. Robbins in reference to these matters? A I don't recall that I ever did.

Q Are you a stockholder of the Eastern Steamship Corporation? A Yes, sir.

Q A substantial stockholder or nominal only? A A very substantial stockholder.

Q You personally or your firm or both? A Individually and as a firm.

Q Do you know who the other stockholders of that corporation are; is the stock widely scattered or held by a comparatively few? A I think the shares are held by two or three hundred stockholders.

Q Do you know whether Mr. E. D. Robbins is a stockholder of that corporation? A I don't know whether he is a stockholder or not.

Q Did you ever attend stockholders' meetings of the company? A No, sir.

Q You always gave a proxy? A Yes.

Q Did you ever examine the stock ledger or the stock books to ascertain who the stockholders were? A No.

Q Are you able to give us the names of any stockholders outside of yourself? A Yes.

Q Can you say whether there are any corporations owning stock in the Eastern Steamship Corporation? A I do not know.

Q And I understood you to say that in purchasing the property of the Metropolitan Company of Maine No. 2 and the Maine Steamship Company, you dealt with Mr. Robbins? A Yes.

Q You said he could produce and did produce and deliver the goods? A Yes.

Q To whom did you deliver over the securities which paid for those properties?

*Mr. Faulks.* Objected to as immaterial.

A I do not remember.

Q Were they paid over to Mr. Robbins or his interests?

*Mr. Ward.* Objected to as calling for a conclusion.

*Mr. Faulks.* Same objection.

A I do not remember.

Q The consideration was paid, however, in the form of securities which you have described? A Yes, sir.

Q Was there any memorandum of agreement drawn up between the Eastern Steamship Corporation and the owners of the property which you acquired? A I do not recall any.

Q No written papers of any character with reference to this transfer? A If there were, I cannot recall them.

Q I show you here out of the minute book of the Eastern Steamship Corporation an agreement dated the tenth day of January, 1912, between the Eastern Steamship Corporation of the State of Maine and the Metropolitan Steamship Company, also of the State of Maine, very evidently relating to the transaction we have been discussing; do you remember having seen that before or heard of it? A I had quite forgotten that this agreement was ever executed.

Q It now comes back to your mind? A Yes; it looks familiar.

*Mr. English.* Do you want this in evidence, Mr. Faulks?

*Mr. Faulks.* I do not want it in evidence.

*Mr. English.* Then I will put it in evidence. I offer in evidence the agreement taken out of the minute book of the Eastern Steamship Corporation and identified by Mr. Stone.

(Marked Exhibit C. 99.)

*Mr. English.* It is agreed that a copy may be produced by Mr. Hight, their counsel, which can be used with the same force and effect as the original.

*Mr. Faulks.* I have no objection to a copy; I object to the exhibit on the ground that it is immaterial, irrelevant and incompetent to any issue we are trying here.

Q It appears from this exhibit that the corporation, that is to say, the Eastern Steamship Corporation, agrees to issue and deliver to the stockholders of the company, that is to say, the Maine Company No. 2, these 8,500 shares of stock and the bonds; what stockholders were they delivered to, do you know, or who the stockholders were to whom they were delivered? A No.

Q Does it come back to your mind to whom those securities were delivered on behalf of the stockholders of the Maine corporation?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A No, I do not recall.

Q In the preliminaries which preceded the consummation of this arrangement with the Eastern Steamship Corporation and these other concerns, did you have any correspondence with Mr. Robbins? A I do not recall that I did.

Q All the negotiations were verbal? A Oral, yes, sir.

Q And took place where? A As well as I can recall, in New York, Boston and New Haven.

Q Sometimes he would come to your place here in Boston and sometimes you would go where he was? A Yes.

Q When they took place in New Haven, where were they held? A At his home.

Q In New York where were they held, when held?

*Mr. Faulks.* Objected to as immaterial.

A At my office, so far as I can recall.

Q You have a New York office, your firm? A Yes.

Q What period of time did those negotiations back and forth cover? A Several months.

Q Have you any idea as to how many conferences you had with Mr. Robbins in the matter? A There were a great many .

Q Would you say as often as two or three times a week? A Hardly.

Q Once a week? A Possibly.

Q Who was present at those conferences besides yourself, Mr. Robbins and Mr. Austin? A Nobody that I can recall.

*Mr. English.* I would like to reserve the right to continue the examination of this witness in New York, if it is necessary.

*Witness.* I shall be glad to meet your convenience; I am over there every week.

*Mr. English.* We will suit your convenience and go on, if necessary.

*Mr. Faulks.* We will be glad to do that also.

*Galen L. Stone, cross.*

*Cross examination* by Mr. Faulks.

Q You spoke of a conversation that you had with Mr. Robbins with reference to the other stockholders in the Maine Steamship Company No. 2, and said that he did not say who they were, but did say who they were not; what did he say on that subject

*Mr. English.* Objected to, because it is immaterial in this case who the owners were not; we are only concerned with whom they were; it is incompetent and immaterial.

A He assured me on the point about which I was very solicitous, that it was not the New York, New Haven & Hartford Railroad.

Q What did he say on that subject, if you recollect? A I do not recall beyond that assurance, which was very emphatic.

Q He made a positive and direct statement that it was not the New York, New Haven & Hartford Railroad? A He did.

Q The Eastern Steamship Company was prior to January 1912, as I understand, a corporation of the State of Maine? A Yes, sir.

Q And when the Eastern Steamship Corporation was formed, did it acquire the securities of the Eastern Steamship Company, did it take that company over by way of purchase of securities, or was it the purchase of property? A It purchased its physical property and assumed its current assets and current liabilities.

Q In any event, it purchased properties from the Maine Steamship Company and the Metropolitan Steamship Company? A The idea was to purchase the physical properties in every case.

Q And the payments that were made for those properties were in each instance separate and distinct, as I understand you to say? A Yes, sir.

*Re-direct* by Mr. English.

Q You spoke of some 8,000 shares of stock paid over; there were 8,500 shares, the record shows that; you probably misspoke.

*Mr. Faulks.* You have put the agreement in.

A Yes, my recollection is 8,000.

Q You say you were solicitous to ascertain whether the New Haven Railroad was the owner of this Maine Company No. 2; why were you so solicitous? A Simply matter of ordinary business prudence; I didn't wish, because of what gentlemen of your profession had told me, to enter into any transaction which remotely or near could bring me into violation of the Sherman anti-trust law.

Q You were afraid you might become involved in some accusation of suppression of competition or something of that character? A I was, in case the railroad appeared to be the owner.

Q Did Mr. Robbins tell you whether the New England Navigation Company was the owner? A He did not.

Q He didn't say anything about it one way or the other? A No.

Q Did he tell you whether the New England Steamship Company was the owner? A I don't recall that he did.

Q You do not recall that he mentioned that one? A No.

Q Did he tell you whether the Hartford & New York Transportation Company was an owner? A No.

*Galen L. Stone, re-cross.*

Q Did he mention that one way or the other? A No.

Q Your inquiry was as to whether the New Haven—

A I wished to satisfy myself on that point.

Q And when he said it was not the railroad, you stopped and asked no further questions? A Yes.

*Re-cross examination* by Mr. Faulks.

Q Did you ask Mr. Robbins or did he say anything to you as to whether the New Haven Railroad Company interests had any ownership of this stock or interest in it; was the talk confined to the New Haven Railroad, or did it extend to the New Haven Railroad interest? A I cannot recall his exact words, but I have a clear impression that neither the New Haven nor any of its subsidiary corporations owned that company.

*Mr. English.* I object to the witness stating his impression and move to strike that out of the record.

Q How did you get that impression?

*Mr. English.* Objected to as improper, incompetent and immaterial.

A From direct inquiry of Mr. Robbins.

Q And as a result of what he said to you?

*Mr. English.* Objected to.

A I was satisfied that neither the New Haven nor any of its subsidiary corporations owned the Metropolitan Steamship Company of Maine.

*Re-direct* by Mr. English.

Q Did Mr. Robbins tell you who owned that company? A No.

Q Did you ask him? A I do not recall.

GALEN L. STONE.

*Direct examination* by Mr. English.

Q I think it already appears in your examination that you are connected with the Eastern Steamship Corporation? A Yes, I am a director.

Q And also stockholder? A And a stockholder, yes, sir.

Q Were there two Eastern Steamship Corporations originally formed? A So far as my knowledge goes, the Eastern Steamship Corporation is the first of its name.

Q Was there a predecessor company formed a month or two prior to January of 1912 for the same general purpose? A I don't know of any other organization; there had been Eastern Steamship Companies; this was the first to bear the title of Eastern Steamship Corporation.

Q I had the impression that there was a company formed about a month before the Eastern Steamship Corporation, which you testified about, was formed? A If so, I never heard of it. That title "Corporation," that word "Corporation" was put into the title to differentiate it from other Eastern Steamship companies. I never heard of any other corporation of that title.

Q The only one which you know of was the Eastern Steamship Company which was an operating company ? A Yes.

Q Do you know the Eastern Securities Company? A No.

Q Did you ever hear of that? A I have heard the name mentioned.

Q Do you know what state it is incorporated under? A I do not.

Q I think you said that you paid over to whoever was the person to receive it, the bonds and the stock which went to pay for the properties of the Maine Steamship Company and the Metropolitan Company No. 2 of Maine?

*Mr. Faulks.* I don't think he testified to that.

Q At any rate, you did testify that there was paid for the properties of those two companies stock and bonds; you remember that? A I think I should have testified that I made an agreement that they would be paid. About the payment I don't know.

Q The fact appears it was paid. You know that the Metropolitan Company of Maine No. 2 was to get 8,500 shares of stock of the Eastern Steamship Corporation? A My recollection was it was to get 8,000 shares. I am not sure it was 8,000 or 8,500.

Q We showed you the resolution which showed 8,500, you remember? A Yes.

Q Did you personally hand over that stock? A No.

Q Do you know who did?

*Mr. Faulks.* Objected to as immaterial.

A I cannot clearly recall who handled those pieces of paper.

Q Who was helping you in the detail of the matter? A Mr. Hight, counsel, had direct charge of those actual deliveries, and there were in the room at the time Josiah Hayden, the treasurer of the Eastern Steamship Corporation.

Q Any one else? A Mr. Edward D. Robbins was there; Mr. John F. Hill, of Maine, was in the room.

Q Governor Hill? A Governor Hill, yes. I think Mr. Austin was present, but I am not absolutely sure. I do not recall, I think there were two or three others.

*Mr. Faulks.* What time are you speaking of, Mr. Stone, the time the agreement was made or securities delivered?

*Witness.* He spoke of the delivery of the securities; at the delivery of the securities.

Q Where was that meeting held? A That meeting at which the temporary certificates or receipts calling for Eastern Steamship Corporation securities were delivered, was held in the banking rooms of the Old Colony Trust Company in Boston.

Q You think Mr. Hight attended to the physical handing out of those things? A I think Mr. Hight directed it.

Q You had more or less clerks there helping out, or was this all by principals? A Almost entirely, mainly by principals, but I am not clear whether there were some clerks of the Eastern Steamship Corporation or Company present or not.

Q Do you remember whether these 8,500 shares were handed over to Governor Hill? A I do not; I was not personally interested in that.

Q You have no recollection as to what was done with them? A No, sir.

Q Do you know whether any securities, either stock or bonds, were handed over to Mr. Robbins?

*Mr. Faulks.* Objected to as immaterial.

Q I do not recall. I was in the room at that time and talking on general matters, and having arranged the business, it was satisfactory that Mr. Hight should attend to the execution of the details.

Q Mr. Robbins, from what you have already said, I think, was there as representing the interests of the Metropolitan of Maine, No. 2, and the Maine Steamship Company?

*Mr. Faulks.* I object to that; I don't think the witness has said that.

*Mr. English.* On page 617, "he claimed to represent the owners of that company," referring to the Maine Company No. 2.

*Mr. Faulks.* I submit there is nothing in the evidence which warrants this question or forms any proper foundation for it; that in any event it is incompetent and immaterial.

*Mr. Ward.* I object to questions dealing with the general subject matter of the delivery and exchange of securities of the Eastern Steamship Corporation as not being evidential on the issues between the complainant and the Pacific Navigation Company.

A I so understood it.

Q You don't now recall whether the securities were physically delivered to you or somebody for you? A I do not.

Q Do you know whether Governor Hill took away any of those securities with him? A I do not.

Q Do you happen to know, Mr. Stone, who is the present owner of the $1,700,000 bonds which were delivered as part payment of the property

of the Maine Steamship Company? A No, sir, I do not know.

Q You spoke of Governor Hill; did you have business relations with him? A I had.

Q In what connection? A As a stock broker.

Q Anything else? A Otherwise, only as director of the Eastern Steamship Company, Eastern Steamship Corporation and other corporations.

Q He was a director of the Eastern Steamship Company prior to the merger? A To the best of my recollection—yes, he was.

Q You were also a director in that? A Yes.

Q Do you know whether he was a director in the Boston and Maine Railroad?

*Mr. Faulks.* Objected to as immaterial.

*Mr. Ward.* Same objection.

A I do not.

Q Do you know whether he was a director in the Maine Central? A I do not.

Q Then after the formation of the Eastern Steamship Corporation he became a director in it? A Yes.

Q Up to the time of his death? A Yes.

Q When your Eastern Steamship Corporation took over these properties of the Maine Steamship Company and the Metropolitan Company No. 2, I suppose you satisfied yourself of the value of the property you were buying, didn't you? A I did.

Q What value did you put on those four freight steamers—Whitney, Winter and the others, which belonged to the Metropolitan Company No. 2?

*Mr. Faulks.* Objected to as immaterial, irrelevant and incompetent.

A It is impossible for me to recall just the division that was made on the values of the property received from the Metropolitan No. 2.

Q Was the thing all one lump transaction virtually?

*Mr. Faulks.* I object to the question on the ground that the witness has already testified to the contrary, and on the ground that the question is leading, on the ground that it calls for a conclusion or characterization of something by the witness and not of a statement of fact, and upon the further grounds that it is irrelevant and immaterial.

*Mr. Ward.* I object on the ground that the question is obscure.

Q Mr. Stone, as aiding you in answering my question as to what the properties were valued at, I call your attention that at the last hearing in Boston you were asked this question: "Was there a segregation, for the purpose of payment, of the property of the Maine Company No. 2, as opposed to the property of the Maine Steamship Company, or was it all one lump deal?" and you answered: "There were two distinct payments." Can you give us the value which you placed on the property of the Maine Steamship Company and the value of the property of the Metropolitan Company, Maine No. 2, for which those two distinct payments were made?

*Mr. Faulks.* I object to that question on the grounds already stated.

A To the best of my recollection, the values which were placed upon both properties in the aggregate was about $5,500,000, on the basis of a cash transaction. I can only approximate the

way that amount was divided in the two purchases. As well as I can remember, it was about $1,300,000 or $1,400,000 for the property of the Metropolitan Steamship Company of Maine No. 2, and $4,100,000 or $4,200,000 for the property of the Maine Steamship Company.

Q Was anything allowed in that valuation for good will?

*Mr. Faulks.* I object to that as immaterial and irrelevant and as leading.

*Mr. Ward.* I renew my objection to this line of testimony on the ground that it is immaterial and irrelevant and does not bear on any of the issues between the complainant and the defendant Pacific Navigation Company.

I would like to have you consent, Mr. English, that my objection stand to this entire line of examination.

*Mr. English.* That will be satisfactory.

A I cannot clearly recall, but I do not think any considerable sum was allowed for good will in the case of either transaction.

Q Did you happen to be before the House Committee at Washington on the famous occasion when Mr. Austin was interrogated against his will? A I was present as a listener.

Q Can you give us any approximation of what the good will was put at?

*Mr. Faulks.* Same objection.

A I think that the item of good will was necessarily entered up in the books at something like $1,700,000, but that more properly should should have been entered as a discount on securities, as there were issued, as I recall, $7,200,000 par value of securities in those two transactions,

but it would have been impossible to sell those securities to raise as much as $5,500,000, or whatever sum was agreed on as the real values of those properties at that time, or at any subsequent time.

Q At the time of this negotiation and transaction was the Cape Cod Canal, as it is called, opened up? A No.

Q Is it opened up now? A No, not as far as I know.

Q Was that a factor which you took into consideration in buying this property? A It was.

Q And that related to the service between New York and Boston? A Yes.

Q It shortened the route? A Yes.

Q That related to both the freight and passenger traffic between those ports? A Principally to the passenger traffic.

Q In including this good will among the assets taken over, did you include in it the good will for the passenger route which had been created between New York and Boston?

*Mr. Faulks.* I don't understand the witness to have said that anything was actually included for good will.

*Mr. Ward.* I do not think the question is fair, as the witness has practically testified that the item of good will was a mere bookkeeping matter.

*Mr. English.* That is your conclusion from his testimony; he hasn't said that.

*Mr. Faulks.* I object to that as immaterial and incompetent.

A No.

Q Which company as between the Metropolitan of Maine No. 2 and the Maine Steam-

ship Company did you consider as having the more valuable good will?

*Mr. Faulks.* Objected to as immaterial and incompetent, and as improper, because Mr. Stone's conclusion in the matter would be of importance.

A The good will in either case was not of much value as far as I recollect; it was not considered at that time to be of great value, as I recall.

Q But of some value?

*Mr. Faulks.* Objected to as leading.

A That there might possibly be some small value attached to the name of the Metropolitan Steamship Company, which had been in business for a long time as a freight line between New York and Boston.

Q And also because it had run a passenger service for some years?

*Mr. Faulks.* Same objection.

A No, sir.

Q Did you attach no value whatever to the fact that for five years preceding it had run a passenger line between New York and Boston?

*Mr. Faulks.* Same objection.

A We attached no value.

Q None at all? A No, sir.

Q The only value you gave to it was as a freight line? A As a freight line absolutely. If I may amplify the answer?

*Mr. Faulks.* I submit the question has been answered and the witness ought not to volunteer anything.

*Galen L. Stone, direct.*

Q Don't you know that it was claimed that the freight line didn't pay?

*Mr. Faulks.* I submit that that question is too indefinite to permit the answer to be of any evidential value.

*Mr. Ward.* Objected to as leading.

*Mr. Faulks.* I object to all these questions on that ground, of course.

A I never heard that claim made.

Q Did you examine the books, or have examined the books which showed the operation of the freight line by the Metropolitan Steamship Company of New Jersey, that is to say, the company which took over the property from the receivers of the old Metropolitan Company No. 1? A No, sir.

Q Did you examine or have examined the books or records to show what the earnings of the freight line had been after the freight boats had been transferred from the Metropolitan Company of New Jersey to the Metropolitan of Maine No. 2? A It is impossible for me to divide my recollections as between those companies, and I did not feel under the necessity of examining into the records of that business at all.

Q Are you able to say now whether as between the passenger service and the freight service the one was more or less valuable than the other?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

*Mr. Ward.* I object to it as an attempt to impeach your own witness.

A My recollection is vague, but it is that the freight service had been profitable and the passenger service had not been profitable.

Q That is your present recollection, which I suppose would be subject to correction from the books, if you were wrong? A I don't know that I can answer that question.

Q You don't want your recollection contrary to the real fact? A I have answered and given my recollection; you can get the facts.

*Mr. Faulks.* He has answered your question.

Q What was the par value of the shares of stock of the Eastern Steamship Corporation which were turned over on this transaction?

*Mr. Faulks.* That has already been testified to—$25 a share.

A No, at the time of the transaction the par value of the preferred shares was $100 and the par value of the common shares was $50.

*Mr. Faulks.* The common shares were reduced to $25 a share?

*Witness.* Subsequently, yes.

Q And at the time the securities were turned over on the purchase of the property of the Metropolitan of Maine No. 2 and the Maine Steamship Company, the par value of the stock was $50 a share? A For the common stock and $100 for the preferred stock.

Q Has the preferred stock since been reduced? A No.

Q That still stands at $100? A Yes.

Q What about the common stock? A The par value of those shares was subsequently reduced to $25.

Q When was that relative to the first of January, 1912? A More than a year afterwards.

Q Was it reduced by a cash payment or how?

*Mr. Faulks.* I object to this as immaterial.

A It was reduced by a vote of the shareholders.

Q Just a voluntary reduction by a vote of the shareholders? A Yes.

Q Without any payment of any money? A Without the payment of any money.

Q You testified that you are a stockholder of the Eastern Steamship Corporation; have you any objection to stating the extent of your stockholdings?

*Mr. Faulks.* I object to it, even if the witness does not, upon the ground that it is immaterial and irrelevant and incompetent, and also that it is unfair to the witness.

A No.

Q What is the extent of your stock holdings in the Eastern Steamship Corporation?

*Mr. Faulks.* Same objection.

A The holdings, which are of my wife and myself jointly, are 2,000 shares of the preferred stock and somewhere between 6,000 and 8,000 shares of the common stock.

Q And in addition to that is Hayden, Stone & Co. a stockholder? A Yes.

Q Have you any objection to stating their stockholdings? A I don't recall the amount of their holdings, but let us say slightly in excess

of 2,000 shares of the preferred stock and none of the common stock.

Q Do you know to what extent Governor Hill was a stockholder in the Eastern Steamship Corporation? A I do not.

Q Did you know Mr. Mellen, the former president of the New Haven Railroad? A I do.

Q Did you ever talk with him about this Metropolitan Steamship Company line?

*Mr. Faulks.* Objected to as irrelevant, immaterial and incompetent.

A Just define that.

Q Did you ever have any conversation with Mr. Mellen with reference to the operation of the line of boats, either freight or passenger, carried on by the Metropolitan Steamship Company?

*Mr. Faulks.* Same objection.

A Only in a most general way.

Q That was with reference to what?

*Mr. Faulks.* Same objection.

A Only as to the general volume of business and what should be a fair profit to expect from it.

Q And when was that conversation had? A Prior to 1912.

Q Do you remember how long prior, approximately? A It is very difficult to fix the time; I should say more than a year prior; I should say it must have been in 1910.

Q What was the conversation with reference to a fair profit to expect on the business?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A I do not recall at the present time.

Q Did that discussion of the profit relate to the profit upon the capitalization of the company? A No, sir.

Q On what?

*Mr. Faulks.* Same objection.

A Simply as to volume of tonnage and reasonable operating costs.

Q And have reference to the value of the equipment? A Not at all.

Q How did it come about that you and Mr. Mellen were discussing the possible earning capacity of that line?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Objected to as immaterial, irrelevant and incompetent.

A As well as I can recollect, it was in a general search for information—

Q Where was the conversation had? A —which I had begun at that time as to the general value of that business.

Q Where was the conversation had? A In Mr. Mellen's office, either in Boston or New York, I am not sure.

Q At that time did you have under contemplation your scheme which was subsequently crystalized into the Eastern Steamship Corporation? A No.

Q What was the object of your getting this information? A I had a desire to control it.

Q The steamship line? A Yes.

Q Who else did you apply to for that general information, Mr. Robbins?

*Mr. Faulks.* Same objection.

A No.

Q Anybody else in the New Haven Road? A No.

Q Why did you go to Mr. Mellen for information about the Metropolitan Steamship Company?

*Mr. Faulks.* Same objection.

A As the principal factor in freight transportation in New England, I felt he would have some very interesting information and views as to the profitableness of that business.

Q Did Mr. Mellen to your knowledge have any connection with the Metropolitan line at that time? A I have no knowledge that he had.

Q Did the New Haven Railroad? A Not as far as I know.

Q Then why did you think that he as president of the railroad would be able to enlighten you on the profitableness, one way or the other, of the Metropolitan line?

*Mr. Faulks.* The witness has answered the question.

A I refer to my former answer.

Q What was that former answer? A You asked that same question before. I applied to him because he represented a factor in railroad freight transportation in New England; I thought his views as to the volume of business going over that line, and the profits expected from it, would be very interesting and valuable.

Q Did he give the information which you wanted?

*Mr. Faulks.* Objected to as immaterial and as indefinite, and as calling for a conclusion on the part of the witness, and also leading.

*Mr. Ward.* Same objection.

A I cannot recall now clearly what he said.

*Galen L. Stone, cross.*

Q From your recollection, did he discuss the subject intelligently, or did he seem to have a knowledge of the facts or not?

*Mr. Faulks.* Objected to on the same ground.

*Mr. Ward.* Same objection.

A I cannot recall; I cannot answer that question; I do not know at the present time.

Q You of course know the passenger steamers Massachusetts and Bunker Hill which operated between New York and Boston? A Yes.

Q Who operated those steamers in 1911, just the summer before your Eastern Steamship Corporation acquired them? A I think the Maine Steamship—

*Mr. Faulks.* If you know.

Q (Last question repeated.)

A I don't remember, I think it was the Maine Steamship Company.

Q Do you know whether they ever belonged to the Metropolitan of Maine No. 2? A I never knew that they did belong to the Metropolitan of Maine No. 2.

Q Do you know what company transferred them to the Maine Steamship Company, from whom you bought them? A I do not.

*Mr. Faulks.* No questions.

*Cross examination* by Mr. Ward.

Q Mr. Stone, you answered Mr. English by saying that you did not examine the books of the Metropolitan Company of New Jersey or the Metropolitan Company of Maine No. 2; because it wasn't necessary; why wasn't it necessary? A I was tolerably familiar as a director with

the operations of the Metropolitan Steamship Company of Maine No. 2; I relied very largely on Mr. Austin's general judgment of the business and its profitableness under our management.

Q Mr. Austin co-operated with you in the organization of the new company? A Yes.

Q And advised you as to the values of the equipment? A Yes. May I correct an answer to one question?

*Mr. English.* Yes, sir. What was the question?

*Witness.* I think you asked me if I applied to Mr. Robbins for information. I am not certain whether your question was with regard to the value of the Metropolitan Steamship Company of Maine No. 2 or the value of the Maine Steamship Company or its earnings.

*Mr. English.* My question related to the Metropolitan Company.

*Witness.* Then I have no change to make.

*Mr. English.* Your answer was correct as to that?

*Witness.* Yes.

*Mr. English.* You did apply to him for information as to the Maine Steamship Company?

*Mr. Faulks.* Objected to as immaterial and incompetent.

*Witness.* I did as to its earnings.

*Mr. Ward.* I have no further questions.

NORMAN L. BASSETT, sworn for complainant.

*Direct examination* by Mr. Brown.

*Mr. Brown.* I will offer in evidence a certified copy of the certificate of incorporation of the Eastern Securities Company, organized under the laws of this State, under certificate dated January 4, 1912, certified to by the Secretary of State.

*Mr. Faulks.* I object to the reception in evidence of this certificate upon the ground that it and its contents are irrelevant, immaterial and incompetent, under the decision of any issue involved in this suit.

*Mr. Ward.* Same objection, and the further objection that the certificate is of a later date than October 1, 1910, when the conspiracy was alleged to have been consummated.

(Marked Exhibit C. 137a.)

Q Where do you reside, Mr. Bassett? A Augusta, Maine.

Q How long have you resided in Augusta, Maine? A Since 1898.

Q In what business are you engaged? A Lawyer.

Q How long have you been practising law? A Since October, 1898.

Q You do a general practice? A I do.

Q Have you been practising in Augusta all this time? A All this time.

Q Did you know ex-Governor John F. Hill? A I did.

Q How long did you know him? A Ever since I have been in Augusta.

Q That is since 1898? A Yes, sir.

Q Did you attend to any legal business for him? A Yes.

Q When did you commence attending to his legal business? A I was until 1907 a member of the firm of Cornish & Bassett; before that time our firm occasionally did business for him; the firm was dissolved in 1907 by the retirement of Judge Cornish, and I succeeded to the business. From that time on, at various times, I did business for Governor Hill.

Q Did you attend to all his legal business? A I do not think I did.

Q Did you attend to a large portion of it? A I don't know what proportion.

Q You attended to a good deal of legal business for him, did you, after that time? A Not a good deal, as you lawyers would perhaps consider it, but from time to time, when things would come along, I would do business for him.

Q When did Governor Hill die? A March 16, 1912.

Q Did you organize the Eastern Securities Company, whose certificate I have just offered in evidence? A I did.

Q For whom or at whose request did you organize this corporation?

*Mr. Ward.* I object on the ground that it is immaterial, irrelevant and incompetent, and on the further ground that no foundation has been laid by proof of the alleged conspiracy, and that the organization was subsequent to October 1, 1910.

*Mr. Faulks.* I make the same objection.

A In the very last of December, 1911, one evening, when I was at Governor Hill's house—it was near to Christmas, as I recall—the gov-

ernor said to me, "A friend of mine wishes to form—"

*Mr. Faulks.* I object to the witness stating or volunteering any statement as to any conversation that he may have had with Governor Hill or with anyone else as to any matter, on the ground that it is hearsay evidence and clearly incompetent.

*Mr. Ward.* Same objection.

*Mr. Faulks.* I also call the witness's attention to the fact that the question put to him does not call for the relation of any conversation with anyone.

*Witness.* I am giving the instructions which Governor Hill gave to me with reference to this corporation.

Q State the instructions.

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A He said, "A friend of mine wishes to form a holding corporation, and will you prepare the necessary papers?" I frequently form corporations. I have formed corporations for Governor Hill as well as others. Sometimes in forming a corporation, those who would be finally interested in it would form some of the incorporators; at other times, and usually, the corporation is formed in my office, with those who are in the office, and at this time, those who were in the office were my brother, George Bassett, and my stenographer, Miss Marion Brainard. I asked the governor the usual questions, as to what would be the name of the corporation, the number of directors, the amount of the capital stock, and whatever other questions I usually

asked in order to make out the preliminary papers to get the charter. He told me that the name of the corporation would be the Eastern Securities Company; that it was desired probably to have two resident directors; he asked me if I would serve as a director, and I told him that I would. With this data I organized the Eastern Securities Company on the usual form that I have in my office, there being three directors; there were three incorporators, my brother George Bassett, Miss Brainard and myself. We held in my office the meetings to organize in the usual method here, and obtained the certificate of incorporation from the Secretary of State. The corporation then having been formed, I was ready to have the permanent officials put in. I usually in a case of this kind have in addition—after the first subscription of stock of one share each by the incorporators, which they subscribe for, for the purpose of qualifying, I usually have a second subscription, to be signed by those who will become the permanent members of the corporation, and I gave to Governor Hill a second subscription of stock, which he said he would forward and obtain the signatures on later, and I mean by "later," within a few days; (after examining certificate) it was all very close to January 5, 1912. He then told me that his friend wished to have all the directors reside in Maine, and that he should ask Mr. Weston to be the other director. This was Mr. Nathan S. Weston, who is in the Vickery & Hill Publishing Company establishment. The governor then told me that the corporation would take and hold 8,500 shares of Eastern Steamship Corporation stock, and he asked me what was the method of obtaining this stock.

I told him that the stock of the Eastern Securities Company could be subscribed and paid for in cash, and that the cash could be used to purchase the stock of the Eastern Steamship Corporation, or that under the laws of our state, it was legal for the directors to vote to purchase the stock of the Eastern Steamship Corporation and to issue therefor the stock in the treasury of the Eastern Securities Company. He said he would let me know which method would be followed. A few days after that, he telephoned me—I cannot recall from what place he telephoned, exactly; I think it was either the house or the office—and he said "My legal friend is very anxious to have the stock paid in cash, and it will be worked out on that line. I shall subscribe and pay for the stock." Referring now to the original records of the Eastern Securities Company, which I have here—

Q Did Governor Hill tell you who his legal friend was? A He did not.

Q Did he give you any other description of him than the fact that he was a legal friend? A No.

Q Did he up to the time of his death give you any information that would lead you to know who that friend was? A He did not; there was no occasion to give me any.

Q When he requested you to organize this Eastern Securities Company, did he give you all the information about the organization at the first interview—the amount of stock and who were to be the incorporators? A I cannot say about that; it was all within a day or two; when it was first mentioned, we were there that night in his house at a social gathering, and he spoke of this, and of course I might not have gotten all

the data down, and frequently I have occasion to telephone to a man afterward and ask more questions.

Q Did he state any reason why this legal friend was having him organize this corporation? A No.

Q You did not ask him? A I did not.

Q When you speak of the governor, you mean John F. Hill? A Yes, always.

Q You do not reside in the State of New Jersey, do you; I forgot to ask you that preliminary question? A I never have been a resident of anywhere but Maine.

Q The officers named in this certificate of incorporation are Mr. George K. Bassett, president? A My brother.

Q Is he in your office? A Now?

Q Yes. A He is not; he was within a few months.

Q At this time was he connected with you? A Yes, he was.

Q And those are the directors and officers that you supplied at the first corporation meeting? A First.

Q First set of officers? A Just as I usually do.

Q M. Brainard is your stenographer? A Miss Marion Brainard.

Q She was the treasurer? A Yes.

Q The directors are Norman L. Bassett, George K. Bassett and M. Brainard? A Yes.

Q How long after the organization of this corporation was this set of officers succeeded by another set? A Those officers were merely for the purpose of obtaining the certificate on January 8, 1912. The adjourned first meeting was held, and at that meeting a second subscription

of stock, each for one share, was presented, signed by John F. Hill and Nathan S. Weston, and at that meeting the resignations of George K. Bassett and M. Brainard as directors were presented and accepted, and John F. Hill and Nathan S. Weston were elected directors in their places, and on that same date a meeting of the new directors was held, and Nathan S. Weston was elected president and John F. Hill was elected treasurer. These were the officers of the corporation until Governor Hill's death.

*Mr. Ward.* My initial objection, you understand, applies to this entire line of questioning?

*Mr. Brown.* Yes.

Q Then who succeeded them?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

*Mr. Ward.* Same objection.

Q After the governor's death on June 8, 1912, Mr. Weston and myself as the remaining directors of the corporation, had a meeting and, pursuant to the power of the by-laws to fill vacancies, elected me as treasurer, to fill the vacancy caused by the death of Governor Hill. From that time on the officers were: President, Nathan S. Weston; treasurer, Norman L. Bassett, and the two directors, Mr. Weston and myself.

Q No director was ever elected to succeed Governor Hill? A None.

Q When Governor Hill first called upon you about this, did he state whether or not there was any occasion for haste in the formation of the corporation? A He did not.

Q Did he say whether or not he wanted it done at once? A The same as all business he gave me to do, I took up and carried out to completion with all reasonable expedition.

Q You usually attend to business at once? A I try to.

Q Among the stockholders for the certificate of incorporation appears the name of Mr. Norman L. Bassett, Augusta, Maine, one share. A That was the stock that I subscribed for as one of the original incorporators.

Q That is the only interest you have in the corporation, one share of stock? A That is all.

Q Mr. George K. Bassett, one share? A Allow me to qualify that by saying that I do not now have that stock, as I will explain later; it was endorsed and given to Governor Hill.

Q The stock of Mr. George K. Bassett? A The same. Let me qualify that. I have here the certificate book. The one share that was subscribed for by Miss Brainard was issued to her and transferred to John F. Hill on January 30, 1912, surrendered, and forms part of a certificate which Governor Hill later had. The share of stock subscribed for by George K. Bassett was on the same date assigned in the same way, surrendered, and a new share of stock issued. The certificate No. 3 which was issued to me, was on the same date assigned by me to Governor Hill and the stock certificate given to him on that same date. And I was present, as I recall, at the time the share of stock subscribed for by Nathan S. Weston was assigned to Governor Hill and given to him. Certificate No. 4, for one share, issued to John F. Hill, being the only share subscribed for, was, as appears by the stub, issued to him on the 13th day of January,

1912. The two shares, one each of which was issued to Miss Brainard and George K. Bassett, were reissued on January 13, 1912, by certificate No. 7 to John F. Hill. This would leave 495 shares of the 500 shares of the capital stock, being $50,000, par value $100 each, and certificate No. 6, for 495 shares, was issued to John F. Hill.

Q On what date was that? A All on January 13, 1912.

*Mr. Ward.* Was this all common stock?

*Mr. Bassett.* All common stock; there was no preferred stock.

Q Have you the minutes there which show how the capital stock of this corporation was paid in? A I have not, so far as the records of the corporation are concerned, but I will explain that.

*Mr. Faulks.* Will you answer the question?

*Witness.* I don't think I have answered it correctly.

*Mr. Faulks.* You have answered it; if you want to correct your testimony, all right, but you ought not to answer questions you are not asked.

Q Have you any records which show how the stock of this corporation was paid in? A I have here the—

*Mr. Faulks.* I think that question ought to be answered yes or no, so we will have some opportunity to object, before the subject matter goes into the record, Mr. Bassett.

A I will say yes.

Q What record is that? A This record is a check of Governor Hill's.

Q Will you let me see that? A (Producing check.)

Q Where did you get this check? A It was among his papers after he died—among the papers connected with this Eastern Securities Company.

Q He died on what date? A March 16, 1912.

Q Who is the executrix of his estate? A His wife, Laura C. Hill.

Q Is she the sole executrix? A She is.

Q Do you represent Mrs. Hill as executrix? A I have been attorney for the estate matter.

Q Have you gone through Governor Hill's papers and records since his death? A I have.

Q Where did he leave his papers and records? A Mostly in his office.

Q Where was his office? A On Chapel street, Augusta, the Vickery & Hill Publishing Company.

Q Who went through these papers with you? A It was from time to time; some of the papers I went through with Mrs. Hill, his son Percy and his stepson John E. Liggett, and other times I went through the papers in the office with Miss Stafford.

Q Who is Miss Stafford? A Miss Stafford, his clerk, and one who kept the records of his office.

Q She was with him prior to his death, as clerk? A Yes, for a number of years.

Q And remained with the executrix after his death? A Yes, with the executrix and with the Vickery & Hill Publishing Company.

Q Where did you find this check, among what papers? A It was given to me by Miss Stafford when I was there one day, and she can tell you where she picked it up from; I cannot at this moment say.

Q Do you know John F. Hill's signature? A Yes.

Q Is that his signature on that check? (Witness shown check.) A That is.

Q Do you know whether or not he had an account with the State Trust Company? A Yes.

*Mr. Brown.* I offer this check in evidence, dated January 15, 1912, for $50,000.

*Mr. Faulks.* I object to the reception in evidence of this check, on the ground that it is irrelevant, immaterial and incompetent.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 137b.)

"Augusta, Me., Jan. 15th, 1912. No. 6130.

STATE TRUST COMPANY
of Augusta, Me.

Pay to the order of Eastern Securities Co. $50,000, Fifty thousand dollars.
Payable, if desired, at

Merchants Nat. Bank, Boston, Mass.

(Signed) John F. Hill."

Endorsed: "For deposit in State Trust Co. to credit of Eastern Securities Co.
Nathan S. Weston, Pres.
John F. Hill, Treas."

Q This check is endorsed "For deposit in State Trust Company to credit of Eastern Se-

curities Co.," signed "Nathan S. Weston, Pres. John F. Hill, Treas." Will you look at those signatures and tell me whose handwriting they are in? A They are in the handwriting of Nathan S. Weston and John F. Hill.

Q It further says, Nathan S. Weston, president; is that president of the Eastern Securities Company? A It is.

Q John F. Hill, treasurer; is that treasurer of the Eastern Securities Company? A It is.

Q In whose handwriting is the body of that check? A Miss Stafford's.

Q This lady right here (indicating)? A Yes.

Q What was the consideration for this check to the Eastern Securities Company? A All the capital stock of the Eastern Securities Company at par.

Q Have you the minutes of the board of directors or a subscription for this stock; have you anything like that? A Yes.

Q What have you there? A I have a stock subscription, on page 5, the first stock subscription.

Q To the stock of the Eastern Securities Company? A For three shares.

Q Will you let me see that, please? A Yes (Producing same.)

Q Is this Norman L. Bassett's signature on that subscription? A Yes, my signature.

Q Is this second signature, Mr. George K. Bassett's signature? A It is.

Q The third signature, M. Brainard's signature? A It is.

Q And what is this book? A This is the stockholders' and directors' record book of the Eastern Securities Company.

*Mr. Brown.* I offer this stock subscription in evidence, taken from that book, page 5.

*Mr. Faulks.* Objected to as irrelevant, immaterial and incompetent.

*Mr. Ward.* Same objection as heretofore.

(Marked Exhibit C. 138.)

"EASTERN SECURITIES COMPANY.

Stock Subscription.

We, the undersigned parties hereto, hereby mutually agree each with the others that we will take the number of shares in the Eastern Securities Company, a corporation proposed to be organized under the General Corporation Laws of the State of Maine, herein set opposite our respective names, and we do hereby each severally and for himself agree to pay for the same to the treasurer of the company on demand, and at such times and in such amounts as the company by its Board of Directors may direct.

Dated January 4, 1912.

| Name. | Residence | No. of Shares. |
|---|---|---|
| Norman L. Bassett, | Augusta, Maine, | One |
| George K. Bassett, | Augusta, Maine, | One |
| M. Brainerd, | Augusta, Maine, | One." |

Q Have you any other subscriptions for the capital stock of that corporation? A I have, on page 20 of the record book.

Q Whose signature is that? A John F. Hill's.

Q In whose handwriting is the signature "Nathan S. Weston?" A Mr. Weston's.

Q And this is from page 20 of the minute book of the Eastern Securities Company? A Of the same book.

*Mr. Brown.*. I offer this subscription in evidence, from page 20.

*Mr. Faulks.* I make the same objection.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 139.)

"EASTERN SECURITIES COMPANY.

Second Subscription for Stock.

We, the undersigned, severally agree each with the others and with the corporation hereafter named, in consideration of the mutual agreement herein contained, to pay for and receive the number of shares of the capital stock of the Eastern Securities Company set against our respective names.

Dated January 6, 1912.

| Name. | Residence. | No. of Shares. |
|---|---|---|
| John F. Hill, | Augusta, Maine, | One |
| Nathan S. Weston, | Augusta, Maine, | One." |

Q Have you any other subscriptions? A I have not.

Q Have you the minutes showing the purchase of the 8,500 shares of stock of the Eastern Steamship Corporation by the Eastern Securities Company? A I have.

Q On what page of that minute book does that appear? A Insertion on page 27.

*Mr. Ward.* Were you the clerk of the corporation?

*Witness.* Yes.

*Mr. Ward.* Were you from its organization?

*Witness.* Yes.

*Mr. Ward.* And these minutes were all kept by you?

*Witness.* Yes; both clerk of the corporation and secretary of the directors, two offices.

*Mr. Brown.* We offer in evidence page 27 of the minute book of this corporation.

*Mr. Faulks.* We make the same objection.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 140.)

"RECORDS OF DIRECTORS' MEETINGS.

136 State St., Augusta, Maine.

January 13, 1912, 1.00 o'clock P. M.

Pursuant to the call of the president a meeting of the directors of the Eastern Securities Company was held at the above time and place.

There were present John F. Hill, Nathan S. Weston and Norman L. Bassett, being all the directors of the corporation.

President Nathan S. Weston called the meeting to order.

On motion therefor it was voted that this corporation issue to John F. Hill four hundred and ninety-five shares of stock now in the treasury for the sum of forty-nine thousand, five hundred dollars.

Voted that the president and treasurer be and are hereby authorized and directed to issue to Norman L. Bassett, George K. Bassett, M. Brainerd and Nathan S. Weston each one share of the capital stock of the corporation, and to John F. Hill four hundred and ninety-six shares of the capital stock of this corporation, upon the pay-

ment into the treasury of the par value of one hundred dollars per share.

Voted to adjourn.

Adjourned.

A true record.

Attest:

NORMAN L. BASSETT,
*Secretary.*"

*Mr. Brown.* I also offer in evidence the record of the directors' meeting held on January 15, 1912.

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 141.)

"RECORDS OF DIRECTORS' MEETINGS.

Office of Norman L. Bassett,
Augusta, Maine.

January 15, 1912, 4.00 o'clock P. M.

Pursuant to the call of the president, a meeting of the directors of the Eastern Securities Company was held at the above time and place.

There were present Nathan S. Weston, John F. Hill and Norman L. Bassett, being all the directors of the corporation.

President Nathan S. Weston called the meeting to order.

On motion therefor it was voted that this corporation purchase of John F. Hill, for the sum of forty-nine thousand, eight hundred dollars, eighty-five hundred shares of stock of the Eastern Steamship Corporation.

Voted that the treasurer be authorized and directed to pay to John F. Hill the sum of forty-nine thousand, eight hundred dollars upon the

transfer to this corporation of said eighty-five hundred shares of stock.

On motion therefor it was voted to adjourn.

Adjourned.

A true record.

Attest:

NORMAN L. BASSETT,
*Secretary.*"

Q From this minute, Mr. Bassett, I observe that it was agreed that the corporation should issue to John F. Hill 495 shares of stock now in the treasury, for the sum of $49,500, and you received a check for $50,000? A That was also in payment of the other five shares.

Q Was there any special resolution with respect to the five shares? A No, those were all the resolutions there were.

Q But he paid for all the stock? A Yes.

Q In that check for $50,000? A Yes.

Q At the time that the corporation passed this resolution to purchase 8,500 shares of stock of the Eastern Steamship Corporation, why did the directors determine that they wanted to purchase this stock; what was the reason for the purchase?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A Because Governor Hill requested it.

Q You didn't know anything about the Eastern Steamship Corporation, did you, the value of its stock? A No. Well, in a general way, I knew that—or thought that—no, I knew but very little about the Eastern Steamship Corporation; I owned none of the stock.

Q The Board of Directors decided to purchase this stock simply because Governor Hill wished them to purchase it? A He said this was the plan, that this was what he wanted done. This corporation was formed, as he said, for his friend, as a holding corporation, and was to hold 8,500 shares of stock of the Eastern Steamship Corporation.

Q It was organized for the purpose of purchasing the stock of the Eastern Steamship Corporation, which it subsequently purchased?

*Mr. Faulks.* I object to that as leading, and as incorrectly and erroneously stating the testimony heretofore given by the witness.

Q For what purpose was this corporation organized? A For a holding corporation.

Q For holding what stock? A I could not say whether it was to hold alone the 8,500 shares of stock, whether there was anything more than that later, but in the first instance it was to hold the 8,500 shares of the Eastern Steamship Corporation stock.

Q And that was so stated to you? A Yes, as I have said before, that is what Governor Hill said.

Q Where is this certificate for 495 shares of stock that was issued to Governor Hill? A It was sent by registered mail to Governor Hill.

*Mr. Ward.* Is this your personal knowledge, Mr. Bassett?

*Witness.* By my examination of the records at the office and his correspondence.

*Mr. Ward.* I shall have to object to answers based on such knowledge as being incompetent.

*Mr. Faulks.* Same objection.

Q Have you the record showing where that stock was sent? Have you in your possession any correspondence that passed between Governor Hill and Edward D. Robbins? A I have.

Q Have you that correspondence with you? A I have.

Q Where did you, get that correspondence? A From the files in Governor Hill's office.

Q What files? A His letter files.

Q You found them in his letter files after his death? A I did.

Q Who assisted you in searching for those? A Miss Stafford.

Q What sort of a letter file or book were those letters found in? A She can tell you specifically, because my mind is not altogether clear; I think it is one of the original letter files where the letters are inserted lengthwise, and under the letter heads, the vowel heads.

Q Does that correspondence contain Mr. Robbins' replies to Governor Hill's letters? A Yes.

Q Will you produce the letters? A Yes, sir. (Producing letters.)

Q Have you the letters written by Governor Hill to Mr. Robbins? A Letter copies, office copies.

Q Where are they? A They run chronologically, as I recall.

Q I show you letter dated at New Haven, January 5, 1912, written on the letterhead of the New York, New Haven and Hartford Railroad Company, office of general counsel, addressed to John F. Hill, 136 State street, Augusta, Maine, signed Edward D. Robbins; is that one of the letters that you found among the letters left by Governor Hill after his death? A It is.

Q And you found that letter in the place you have just described in answer to the preceding question? A We did.

Q Do you know Mr. Robbins' signature? A I do not.

*Mr. Brown.* I offer this letter in evidence.

*Mr. Faulks.* Objected to on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that it is not proven. I understood Mr. Bassett to say that he did not know Mr. Robbins' signature.

*Mr. Ward.* Same objection.

(It is consented and agreed by counsel for the respective parties, that copies of all the exhibits produced by the witnesses may be obtained and marked as exhibits in lieu of the originals.)

(Marked Exhibit C. 142.)

"New York, New Haven and Hartford Railroad Company.

Office of
General Manager.

New Haven, Conn., January 5, 1912.

Hon. John F. Hill,
136 State Street,
Augusta, Maine.

My dear Gov. Hill:

It is now expected that all the steamship matters will be closed up next week Wednesday.

I understand from Mr. Austin that you will probably be at the directors' meeting of the Eastern Steamship Company on Tuesday. If you conveniently can, I hope you

will arrange to stay over until Wednesday morning.

I shall be obliged if you will write to my office in New York whether anything has been done about the organization of the Maine corporation.

With best wishes for the New Year, I am,

Sincerely yours,

(Signed) Edward D. Robbins."

Q I show you a copy of a letter written on the letterhead of John F. Hill, 136 State Street, Augusta, Maine, dated January 5, 1912, marked "Copy," addressed to Mr. Edward D. Robbins, Vice-Pres., New York, New Haven & Hartford, New Haven, Conn., unsigned; where did you get that copy? A From the files.

Q Of Governor Hill? A Yes, the same files.

Q Among the records and papers left by him after his death? A Yes.

*Mr. Brown.* We offer this letter in evidence.

*Mr. Ward.* I object on the same ground as heretofore, and the additional ground that the posting of the letter is not proved, that no foundation has been laid for the introduction of secondary evidence, and this is not proved to be a true copy of the letter sent.

*Mr. Faulks.* I make the same objection, and the further objection that this copy is not signed and in no way proven to be a copy of any letter that Governor Hill ever sent. I have no objection to the substitu-

tion of anything that Mr. Bassett says is a true copy of the original.

(Letter referred to marked Exhibit C. 143.)

John F. Hill,
136 State Street,
Augusta, Maine.

January 5, 1912.

Mr. Edward D. Robbins, Vice-Pres.,
New York, New Haven & Hartford,
New Haven, Conn.

My dear Mr. Robbins:

The Eastern Securities Company has been organized and certificate book will be ready tomorrow or Monday. The seal has already been received.

Mr. Norman L. Bassett, who has attended to this matter, has asked for the signatures of the stockholders.

I have signed for one share, and am enclosing subscription paper herewith for any other signatures which you may wish to have added.

As I understand it, it is your desire to have a majority of the directors here, and that Mr. Bassett and myself shall act in that capacity.

Please give me such further directions as may be necessary to complete the organization of the company according to your wishes.

I also enclose p/a for the signature of whoever may subscribe for stock.

I am also enclosing a letter from Mr. Colman.

Yours truly."

Q In this copy of letter marked Exhibit C. 143, purporting to be a copy of a letter written by Governor Hill to Mr. Edward D. Robbins, it is stated, as follows: "The Eastern Securities Company has been organized;" was that correct at that time, January 5, 1912; the certificate is dated the 4th? A It was.

Q "—and certificate book will be ready tomorrow or Monday." A As I recall—I cannot say.

Q "The seal has already been received." Do you know whether or not you had the seal at that time? A I think so. I remember I ordered it in Boston or came down.

Q You did get one? A Yes.

Q "Mr. Norman L. Bassett, who has attended to this matter, has asked for the signatures of the stockholders." You are the man that attended to this matter? A Yes.

Q Had you asked for the signatures of the stockholders? A That is the signature to the second subscription of the stock that I referred to.

Q You had asked for that? A I had. I asked Governor Hill to get them for me.

Q "I have signed for one share;" had Governor Hill signed for one share? A I cannot say whether he had; I gave him a form of subscription; I do not know what he did with it until it came back.

Q "—and am enclosing subscription paper herewith for any other signatures which you may wish to have added." Did you give him a subscription paper? A Yes.

Q For other signatures? A In that form that you see in the book.

Q "As I understand it, it is your desire to have a majority of the directors here, and that Mr. Bassett and myself shall act in that capacity." Was that what the governor told you? A He told me that his friend wished to have two resident directors, and asked me to be one and said he would be one.

Q "—and that Mr. Bassett and myself shall act in that capacity;" is that what Governor Hill told you? A Yes.

Q "Please give me such further directions as may be necessary to complete the organization of the company according to your wishes." Did Governor Hill subsequently give you instructions as to the organization of the company?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

*Mr. Ward.* Same objection.

A As I have said before, he subsequently told me that his friend wished all three directors to be here in Maine, and that my assistant would be the third.

Q "I also enclose p/a for the signature of whoever may subscribe for stock." What does that mean? A Power of attorney.

Q Was that power of attorney received by you? A It never was; it was not.

Q You don't know whether or not Governor Hill ever received that? A I do not.

Q "I am also enclosing a letter from Mr. Colman." Do you know anything about that? A No.

Q I show you a letter dated January 6, 1912, marked "Copy," on the letterhead of John F. Hill, 136 State Street, Augusta, Maine, addressed to Edward D. Robbins, Esq., General

Counsel N. Y., N. H. & H. R. R. Co., Grand Central Sta., New York, unsigned; where did you get this copy? A From the files.

Q The same files as you have already described? A Yes.

Q Of Governor Hill, and left by him after his death? A Yes.

*Mr. Brown.* I offer this letter in evidence.

*Mr. Faulks.* Objected to on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that the posting of the letter is not proved; it is not signed, and no foundation has been laid for the introduction of secondary evidence, and this is not proved to be a true copy of the letter sent.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 144.)

"John F. Hill,
136 State Street,
Augusta, Maine. January 6, 1912.

Edward D. Robbins, Esq.,
General Counsel N. Y., N. H. & H. R. R. Co.,
Grand Central Sta., New York, N. Y.

My dear Mr. Robbins:

I have your letter of January 5th, and note that you expect to close up all steamship matters next Wednesday.

I wrote you yesterday at New Haven that the Maine corporation had been organized, and that we were all ready to go ahead.

I will be in Boston Tuesday night at the Touraine, and expect to remain until Thurs-

day noon. Our M. C. Meetings are to be held on Wednesday.

Yours truly."

Q "I have your letter of January 5th;" that was the date of the letter that we have just offered in evidence?

*Mr. Faulks.* That speaks for itself; we all know as much about that as the witness does.

Q —"and note that you expect to close up all steamship matters next Wednesday. I wrote you yesterday at New Haven that the Maine corporation had been organized, and that we were all ready to go ahead." The Maine corporation had been organized? A Yes.

Q At that time? A Yes.

Q I show you a letter dated January 6, 1912, written on the letterhead of the New York, New Haven and Hartford Railroad Company, Office of General Counsel, addressed to Hon. John F. Hill, 136 State Street, Augusta, Maine, purporting to be signed by Edward D. Robbins; where did you get that letter? A From the files.

Q The same files? A Yes.

Q Papers and records left by Governor Hill at the time of his death? A Yes.

*Mr. Brown.* I offer in evidence this letter, dated January 6, 1912.

*Mr. Ward.* Objected to on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that it is not proven.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 145.)

"The New York, New Haven and Hartford Railroad Company.

Office of
General Manager.

New Haven, Conn., January 6, 1912.

Hon. John F. Hill,
136 State Street,
Augusta, Me.

My dear Gov. Hill:

I return herewith document which you sent me. It seems to me best that all the original subscriptions should be made in Augusta. My notion is that you should subscribe for all but two of the shares of the capital stock, sufficient to qualify two other directors. A more permanent arrangement can be made later.

I shall hope to see you in Boston Wednesday, when we can go over this matter more fully.

Sincerely yours,
(Signed) Edward D. Robbins."

Q In this letter it is stated "I return herewith document which you sent me." Did Governor Hill deliver to you any document or subscription paper after that date, do you know? A No, I don't think he did.

Q "It seems to me best that all the original subscriptions should be made in Augusta." Was that done? A Yes.

Q "My notion is that you should subscribe for all but two of the shares of the capital stock, sufficient to qualify two other directors." Did Governor Hill subscribe for all but two shares of the capital stock? A No, as I have explained, he subscribed only for one share.

Q He did later purchase and pay for all the capital stock? A As I have said, he gave his check for $50,000 in payment of all the stock; and the stock which had been issued, was assigned to him, as I have stated, and then the certificate for 495 shares issued to him, as I have stated.

Q "A more permanent arrangement can be made later." A different arrangement was made later?

*Mr. Faulks.* I object to reading into the record these letters in the way it is being done, and to the leading questions that are being put to the witness, and which ask him to draw conclusions or make characterizations. I don't think that is the way to do it.

*Mr. Brown.* I will withdraw that for the present. I am entitled to ask him questions based on the letters.

*Mr. Ward.* I move to strike out the questions containing quotations from the letters.

Q I show you a letter dated January 12, 1912, on the letterhead of "Law Offices of Edward D. Robbins, 739 Main street, Hartford, Connecticut," addressed to Hon. John F. Hill, purporting to be signed by Edward D. Robbins, with the letter "K." Where did you get this letter? A From the same files.

Q Files left by John F. Hill at the time of his death? A Yes.

*Mr. Brown.* I offer that letter in evidence.

*Mr. Ward.* Objected to on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that it is not proven.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 146.)

"Law Offices of
Edward D. Robbins,
739 Main Street,
Hartford, Connecticut.

New Haven, Conn., January 12, 1912.

Hon. John F. Hill,
136 State Street,
Augusta, Maine.

My dear Gov. Hill:

I enclose herewith certified check on the Second National Bank of New Haven for $34,387.50, and also uncertified check on the City Bank of Hartford for $10,000, both checks to be applied toward payment of the capital stock of the Eastern Securities Company.

I expect to be in New Haven on Tuesday, but in New York on Wednesday, Thursday and Friday of next week. If you write me so that the letter would reach New Haven later than Wednesday morning, I wish you would write to me at my office in New York.

Very truly yours,
(Signed) Edward D. Robbins,
K."

Q In this letter C. 146 it is stated the gentleman enclosed—

*Mr. Ward.* I object to the form of the question.

Q (Continuing) "certified check on the Second National Bank of New Haven for $34,387.50, and also uncertified check on the City Bank of Hartford for $10,000, both checks to be applied toward payment of the capital stock of the Eastern Securities Company." Do you know anything about those checks?

New Jersey State Library

*Mr. Faulks.* I object to that question. I submit that it is not proper for counsel to read into the record from letters which have been objected to, and which therefore may never be admitted in evidence, and I think it is improper for him to put questions in the form in which he is putting them, and that his questions to the witness ought not to include quotations from the letters. It is not at all necessary for any purpose that he can have in mind; there can be no possible reason for doing it, except to get into the record in this way, extracts from letters which themselves may never be admitted in evidence. Mr. Brown must know that there are many other ways that would be proper and that will serve his purpose quite as well as the one he is following.

Q This letter refers to two checks, one for $34,378.50, on the Second National Bank of New Haven, and one for $10,000, uncertified, on the City Bank of Hartford; do you know anything about those checks? A Yes.

Q What do you know about those checks?

*Mr. Faulks.* I object to that as immaterial and irrelevant.

*Mr. Ward.* Same objection.

A What I know I obtained from my examination of the records of the State Trust Company, of which I am a trustee and one of the executive committee.

Q Then all the information you have about those checks is obtained from the books of the State Trust Company? A It is.

Q You haven't the checks? A I have not.

Q Have you copies of the checks? A I have not.

Q I show you a letter dated January 12, 1912, marked "copy," on the letterhead of John F. Hill, 136 State street, Augusta, Maine, addressed to Edward D. Robbins, unsigned; where did you find or procure that copy? A From the same files.

Q Files left by John F. Hill at the time of his death? A Yes.

*Mr. Brown.* I offer in evidence this letter dated January 12, 1912.

*Mr. Ward.* Objected to on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that the posting of the letter is not proved; it is not signed, and no foundation for the introduction of secondary evidence has been laid, and this is not proved to be a true copy of the letter sent.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 147.)

"John F. Hill Copy
136 State Street,
Augusta, Maine. January 12, 1912.
Mr. Edward D. Robbins,
New Haven, Conn.

Dear Sir:

I now have the certificate book and am ready to complete the stock issue.

It seems to me unnecessary to send me any check. When I turn over the 8,500 shares of Eastern stock the Securities Company stock can be issued as fully paid, the consideration being more than ample.

If you take this view of the matter, let me know, and if your check has already been sent I will return it.

The checks received the other day I will deposit and remit balance to you after deducting organization expenses.

The papers received the other day I have deposited in my safety deposit vault, properly marked. P/a is attached and Mrs. Hill, who has access with me, understands the matter sufficiently so that there can be no possible misunderstanding.

Yours very truly,"

*Witness.* Excuse me, gentlemen, I have not answered correctly a question which you put to me a little while ago, asking with reference to my knowledge about these checks. I do have other knowledge than what I obtained from the books of the Trust company.

Q What other knowledge have you about the checks? A I have a check of John F. Hill, No. 6129, which was issued by him and passed through the banks.

Q Will you let me see that check?

(Witness produces check No. 6129, dated January 15, 1912, for $44,387.50.)

*Mr. Brown.* I will put that in evidence later.

Q I show you letter dated January 12, 1912, marked "copy," on the letterhead of John F. Hill, 136 State street, Augusta, Maine, addressed to Mr. Edward D. Robbins, 408 St. Ronan St., New Haven, Conn.; where did you find this copy? A In the same files.

Q Among the papers and records left by John F. Hill at the time of his death? A Yes.

*Mr. Brown.* I offer this letter in evidence.

*Mr. Faulks.* Objected to on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that the posting of the letter is not proved; it is not signed, and no foundation for the introduction of secondary evidence has been laid, and this is not proved to be a true copy of the letter sent.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 148.)

"John F. Hill,
136 State Street,
Augusta, Maine.

Copy
January 12, 1912.

Mr. Edward D. Robbins,
408 St. Ronan St.,
New Haven, Conn.

My dear Mr. Robbins:

As I wrote you this morning, I see no occasion for any check in order to issue the Securities Company stock fully paid. The Eastern stock takes care of it. I shall have a vote passed conveying to me all the stock of the Securities Company, in consideration of the Eastern shares.

I have paid $123.35 for organization expenses, as shown by the enclosed voucher. This you will see covers State franchise tax, various fees, attorney's charges, seal, certificate book and binding up of records.

I am having only one record book, which the clerk will retain.

There will be no bank account, so there is no need of any books at this time.

I am enclosing check to your order for the balance.

Yours truly,"

Q Do you know what the organization expenses of the Eastern Securities Company were? A I do.

Q What were the organization expenses? A $123.75.

Q What was that for? A My services for organizing the corporation, $50, and the remaining were disbursements, fees of the State Treasurer, Secretary of State, Register of Deeds, Attorney-General, and seal, stock certificate book and code books.

Q Who paid that bill? A Governor Hill.

Q Paid it to you? A He did.

Q By his personal check? A By check of John F. Hill, incorporated.

Q I show you a letter dated January 13, 1912, marked "Copy," on the printed letterhead of John F. Hill, 136 State street, Augusta, Maine, addressed to Mr. Edward D. Robbins, 408 St. Ronan street, New Haven, Conn., and ask you where you got this letter? A From the files.

Q That is, from the files of the papers and records left by John F. Hill at the time of his death? A Yes.

Q How long after the death of Mr. Hill before you made an examination of these papers and records? A We made an examination right afterwards; we went through his papers, but these papers I did not find until this summer.

*Mr. Brown.* I offer this letter in evidence.

*Mr. Ward.* Objected to as irrelevant, immaterial and incompetent, and on the further ground that the posting of the letter is not proved; it is not signed, and no found-

ation for this introduction of secondary evidence has been laid, and this is not proved to be a true copy of the letter sent.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 149.)

"John F. Hill,
136 State Street,
Augusta, Maine. January 13, 1912.

Mr. Edward D. Robbins,
408 St. Ronan Street,
New Haven, Conn.

My dear Mr. Robbins:

I am just in receipt of your letter of the 12th instant, enclosing certified check on Second National Bank of New Haven for $34,387.50 and check on the City Bank of Hartford for $10,000.

I wrote you yesterday that it seemed to be a better way to issue the Securities stock directly for the Eastern, as cash payment seemed to make it necessary to put the transaction through my books, which seemed unnecessary and on some accounts undesirable.

However, if you still feel that you prefer to have it done that way, return the checks to me which I sent you yesterday, and I will put the thing through just as you desire.

My attorney seemed to think that the transfer of the Eastern stock was an entirely satisfactory way of making payment.

If you still wish cash payment made, let me know and I will arrange the matter that way.

Yours truly."

Q Have these letters that you have produced, and the ones that you will produce, been in your custody and possession ever since you found them last summer? A Yes, I took them to my office.

Q Where were they found when you did find them? A In the files; it was in one of the files I think which we had overlooked, but it was one of those files which I described.

Q That was in John F. Hill's office? A Yes, sir.

Q Have you a certified check for $34,387.50? A I have not. These checks passed through the Trust company and their records show the detail of the checks.

*Mr. Ward.* I move that the latter part of the answer be stricken out as irresponsive, irrelevant and incompetent.

Q Have you a check for the sum of $10,000 on the City Bank of Hartford? A No.

*Mr. Faulks.* I move to strike out the portion of the witness's answer with reference to the $34,000 check, following the words "No, I have not," on the grounds that Mr. Ward has mentioned, and on the further ground that at best it would only be hearsay evidence.

Q I show you a letter dated January 15, 1912, marked "Copy," on the printed letterhead of John F. Hill, 136 State Street, Augusta, Maine, addressed to Edward D. Robbins, Esq., General Counsel N. Y., N. H. & H., New Haven, Conn.; where did you find this letter? A In the same files.

Q Left by John F. Hill at the time of his death? A Yes.

*Mr. Brown.* I offer this letter in evidence.

*Mr. Ward.* Objected to on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that the posting of the letter is not proved; it is not signed, and no foundation for the introduction of secondary evidence has been laid, and this is not proved to be a true copy of the letter sent.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 150.)

"John F. Hill,
136 State Street,
Augusta, Maine. January 15, 1912.

Edward D. Robbins, Esq.,
General Counsel N. Y., N. H. & H.,
New Haven, Conn.

My dear Mr. Robbins:

I am just in receipt of your telegram, and have arranged to make Eastern Securities stock fully paid in cash. We will then purchase the Eastern stock, giving the Securities company check in payment.

I am sorry you bothered to send down those checks. I didn't give the matter much thought the other day when you spoke of it, or I should have told you not to do so. I am enclosing my check for the amount, $44,387.50, which is payable at the Merchants National Bank, Boston, if desired.

I think we have everything all straight now, and I will forward certificate book and seal whenever you desire.

I shall probably be in Boston Wednesday of next week, and may be in New York Thursday and Friday.

Yours truly,''

Q Mr. Bassett, have you a telegram from Mr. Edward D. Robbins to John F. Hill, dated January 15, 1912? A I have not.

Q Have you a check issued by John F. Hill for the sum of $44,387.50? A I have.

Q Will you produce that check? A Yes, sir. (Producing check dated January 15, 1912.)

Q Whose signature is that on that check? A John F. Hill's.

Q Whose writing is that in the body of the check? A Miss Stafford's.

*Mr. Brown.* I offer this check in evidence.

*Mr. Ward.* Same objection as heretofore, and the additional objection that the endorsements are not proven.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 151.)

John F. Hill.

''Augusta, Me., Jan. 15, 1912 19 No. 6129

STATE TRUST COMPANY $44387*

of Augusta, Me.

Pay to the order of Edward D. Robbins $44,387/50. Forty-four Thousand Three Hundred Eighty-seven 50/100 Dollars.

Payable, If Desired, At

Merchants Nat. Bank, Boston, Mass.

John F. Hill.''

*Norman L. Bassett, direct.*

(Stamped on face)

"STATE TRUST CO.
PAID
Jan.
19
1912
AUGUSTA, MAINE."

(Endorsed)

"PAY SECOND NATIONAL BANK.
New Haven, Conn., or order,
Edward D. Robbins."

"PAY TO THE ORDER OF
Any Bank, Banker,
or Trust Company,
JAN. 17, 1912
All Prior Endorsements
Guaranteed
SECOND NAT'L BANK
New Haven, Conn.
Chas. A. Sheldon, Cashier."
"eived Payment
The Boston Clearing House
JAN. 18, 1912 5-39
st National Bank
Of Boston, Mass.
or Endorsements Guaranteed"

"Pay any Bank or Trust Company
5-13 Or Order 5-13
The Merchants National Bank,
Of Boston
By A. P. Weeks, Cashier."

"Pay To The Order of
Any Bank, Banke
or Trust Comp
Jan 17
All Prior E
Sec"

Q I show you copy of a letter dated January 16, 1912, written on the letterhead of John F. Hill, addressed to Mr. Edward D. Robbins, Grand Central Station, New York, N. Y.; where did you find this copy? A In the same files.

Q Among the papers and records left by John F. Hill at the time of his death? A Yes.

*Mr. Brown.* I offer this letter in evidence.

*Mr. Ward.* Objected to on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that the posting of the letter is not proved; it is not signed and no foundation for the introduction of secondary evidence has been laid, and this is not proved to be a true copy of the letter sent.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 152.)

"John F. Hill
136 State Street,
Augusta, Maine. January 16, 1912.

Mr. Edward D. Robbins,
Grand Central Station,
New York, N. Y.

My dear Mr. Robbins:

I am in receipt of your telegram saying that you have no substantial objection to the arrangement proposed for making the Eastern Securities stock fully paid, and stating that you will return my checks and that I can return yours. I deposited your checks yesterday afternoon, when I sent you my own.

When I received your letter enclosing your checks and stating that you preferred

to have the stock fully paid in cash, I drew my personal check for $50,000 payable to the Eastern Securities Co. This was deposited in the State Trust Company here to the account of Eastern Securities Co.

The records show that the stock is issued fully paid, in consideration of this payment by me, 498 shares being in my name and one share each in the name of Nathan S. Weston and Norman L. Bassett to qualify them as directors. All certificates are endorsed in blank.

Subsequently the Securities Co. voted to purchase of me 8,500 shares of Eastern Steamship Corporation common for $49,800, and a check was given me for that amount signed by Nathan S. Weston, Pres., and John F. Hill, Treas. A check for $200 was given me to cover various expenses of organization. So one hand just washes the other.

My attorney is very careful and painstaking, and if you care to see his records, I am sure you will find them correct in every detail. If anything has been left undone, to fully meet your wishes in the matter, let me know and I will give it immediate attention.

Your last telegram makes me think that possibly you intended the checks which you sent me to go directly to the account of the Eastern Securities Co. This has not occurred to me previously.

I have endeavored all the way through to make this matter a personal one so far as possible.

Yours truly."

Q I show you copy of a letter dated January 20, 1912, written on the letterhead of John F. Hill to Edward D. Robbins, Gen. Counsel N. Y., N. H. & H. R. R., New Haven, Conn.; where did you find this copy? A As I recall, in the same files.

Q You found it among the files of the records and papers left by John F. Hill after his death? A In one or two of those letters, we found the original memoranda and the stenographer's note book and then it was transcribed. I don't know but what that last one was taken from the note book.

*Mr. Faulks.* You didn't find any copy written out at all?

*The Witness.* I don't think so, the last one, although before, as I recall, every one was found.

Excuse me, I have unintentionally made a misstatement. When I went to the office and got out these letters, Miss Stafford was there and we took them from the files; I thought we took them from the files; I thought we took them all. Miss Stafford can explain to you. She says that the copies we have here of the office copies, were taken from the stenographer's note book, but when I got there the copies were taken from the note books and not pulled out of the files of the papers. The original ones came from the files. You can straighten it out.

Q Were these copies written out when you went there? A When I got to the office those copies were all written out, and I understood that those were taken from the files.

Q Written out after his death? A I thought I was correct in my statement. You can find that out correctly from Miss Stafford or Miss Grace Lord.

Q Who is Miss Grace Lord? A Miss Grace Lord is in the office of Governor Hill and has been there for a number of years.

Q Is she still in the office of Governor Hill? A Yes.

Q Was she his stenographer? A I cannot tell you; that could be explained by her or Miss Stafford, because I do not know about the business methods of the office.

*Mr. Faulk.s* Then I understand you to say now, Mr. Bassett, that you don't know of your own knowledge whether any of those copies of alleged letters that you have produced were in fact in Governor Hill's files at the time of his death or not?

*Witness.* No, I do not.

Q You stand subject to correction on that? A I do. I was sincere in my statement, until it was corrected by Miss Stafford.

*Mr. Faulks.* I am sure of that, but you now say you don't undertake to say that they were among his papers at the time of his death.

Q That only applies to the letters written by Governor Hill to Mr. Robbins? A That is all.

Q Not to the letters purporting to be written by Mr. Robbins to Governor Hill? A No.

*Mr. Faulks.* You don't undertake to identify any signatures purporting to be the signatures of Mr. Robbins at all?

*Witness.* No, I never saw Mr. Robbins or I never saw any of his writing except these letters.

*Mr. Brown.* I offer this letter dated January 20, 1912, in evidence.

*Mr. Faulks.* Objected to on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that the posting of the letter is not proved; it is not signed, and no foundation for the introduction of secondary evidence has been laid, and this not proved to be a true copy of the letter sent.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 152a.)

"John F. Hill,
136 State Street,
Augusta, Maine. January 20, 1912.

Mr. Edward D. Robbins,
Gen. Counsel N. Y., N. H. & H. R. R.,
New Haven, Conn.

Mr. dear Mr. Robbins:

I have only a moment this morning to write you. I am sending by American Express prepaid, certificates of the Eastern Securities Company endorsed in blank, as desired.

I hope to see you in Boston Wednesday.

Yours truly,"

*Witness.* You understand that the original stenographer's note books were among his papers?

*Mr. Faulks.* You don't know anything about the transcription of notes or anything of that kind?

*Witness.* No, I do not.

*Mr. Faulks.* You wouldn't want to undertake to say they were the original note books?

*Witness.* I have known Miss Lord a long time, and when Miss Lord—and I was in the office and I have seen what purports to be the original note books from which they were taken, and if she says so, I would be willing to say, at least, that I thoroughly believe it. That is all I can say.

*Mr. Ward.* These letters from Governor Hill to Mr. Robbins are not carbon copies?

*Witness.* No, I don't understand they are.

Q After the purchase of the 8,500 shares of stock of the Eastern Steamship Corporation by the Eastern Securities Company do you know what was done with that stock or the certificate of stock?

*Mr. Faulks.* Of your own knowledge.

A I suppose I should have to say no, of my own knowledge.

Q Who was treasurer of the Eastern Securities Company at that time? A John F. Hill.

Q After the death of Governor Hill or have you ever seen that certificate of stock since it was purchased by the Eastern Securities Company? A Did you ask me a moment ago about the stock certificates of the Eastern Securities Company or the stock certificate of the Eastern Steamship Corporation? I understood you to say Eastern Securities Company. There were a number of certificates.

Q Do you know what became of the certificate of 8,500 shares of stock of the Eastern

Steamship Corporation that were purchased by the Eastern Securities Company? A Yes.

Q What became of the certificate for 8,500 shares of stock issued by the Eastern Steamship Corporation after it was purchased by the Eastern Securities Company?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

*Mr. Ward.* Same objection.

A It was found in an envelope.

Q By whom? A By Mrs. Hill, Percy V. Hill, John F. Liggett and myself.

Q Where? A In in a box in which were securities of John F. Hill, incorporated.

Q When?

*Mr. Faulks.* My objection goes to this entire line of testimony.

*Mr. Brown.* Certainly.

A As I recall, it was March 26, 1912.

*Mr. Faulks.* From what are you refreshing your recollection; what are the papers to which you are referring?

*Witness.* From notes in my diary. I made consecutive memoranda from minutes in my office diary and papers.

Q Where was this box? A In Boston, Massachusetts.

Q In whose name was that box? A John F. Hill, incorporated.

Q What did you find? A I found an envelope, of which I have here the original marked on the outside—

*Mr. Ward.* Is the endorsement in the handwriting of Governor Hill?

*Witness.* Yes.

Q Is this the original envelope which you found in the safe deposit box? A Yes.

Q In whose handwriting is the endorsement on the envelope? A John F. Hill's.

*Mr. Faulks.* Are the contents of the envelope as it is produced now, as you found it at that time?

*Witness.* With the exception of the 8,500 shares of stock, about which I can explain.

*Mr. Faulks.* You offer the envelope and its contents?

*Mr. Brown.* I have asked about the contents.

Q Was this document dated March 6, 1911, in the envelope? A Yes.

Q Was this receipt signed by Josiah M. Hayden, treasurer, dated January 10, 1911, in the envelope? A It was.

*Mr. Brown.* I offer the envelope with the endorse—

*Witness.* That 1911 is obviously a misstatement.

*Mr. Faulks.* I object to the reception in evidence of both the envelope and the two papers which the witness says he found in it, on the ground that they are irrelevant and immaterial, and on the ground that the two papers found within the envelope are in no way proven.

*Mr. Ward.* Same objection.

(Envelope marked Exhibit C. 153.)

"8,500 Shrs of Eastern Steamship Corporation
The property of the Eastern Securities Co.
John F. Hill, Treas.
Jan. 13th, 1912."

(Note enclosed marked Exhibit C. 154.)

"$1,500,000.#

New Haven, Conn., March 6th, 1911.

One year after date for value received we promise to pay to the order of THE BILLARD COMPANY One Million, Five Hundred Thousand#——Dollars, at the

SECOND NATIONAL BANK OF NEW HAVEN,

with interest at the rate of 4½ per cent. per annum, payable semi-annually, and have deposited as Collateral Security 30,000 shares of the capital stock of METROPOLITAN STEAMSHIP COMPANY organized in 1910, with power to sell the same at auction or private sale without notice on the non-payment of this note at maturity, and it is hereby agreed and understood, that said collaterals or if recourse is had to said collaterals, any excess of said collaterals upon this Note, shall be applicable to any other note or claim which said Bank holds or may hold against us, and in case of any exchange of, or addition to the collaterals above named, the provisions of the Note shall extend to such new or additional collaterals.

THE NEW ENGLAND SECURITIES COMPANY

By Geo. A. MacIntosh,
Treasurer."

ENDORSEMENT—

"Interest paid to 19 $
Interest paid to 19 $
Interest paid to 19 $
Interest paid to 19 $
Interest paid to 19 $
Interest paid to 19 $
Interest paid to 19 $
Interest paid to 19 $
Interest paid to 19 $
Interest paid to 19 $

$100,000 Received July 17, 1911.

One hundred thousand Dollars as principal on the within note.

$ Received 19

Dollars as principal on the within note.

$ Received 19

Dollars as principal on the within note.

$ Received 19

Dollars as principal on the within note.

(Receipt enclosed marked Exhibit C. 155.)

"Boston, January 10, 1911.

"Received of John F. Hill, Twenty-eight thousand shares of the capital stock of the Metropolitan Steamship Co. of Maine.

Josiah M. Hayden, Treasurer."

Q Where did you find the note for $1,500,000, dated March 6, 1911? A In the envelope.

Q Do you know anything about whether John F. Hill owned 28,000 shares of the capital stock of the Metropolitan Steamship Company of Maine on January 10, 1912? A He did not, according to his books, and his books were kept in such

minute detail, that it would have been shown if there had been any.

Q Do you know anything about whether or not in January, 1912, John F. Hill owned a note for $1,500,000, dated March 6th, 1911, executed by the New England Securities Company by Geo. A. MacIntosh, Treasurer? A He did not.

*Mr. Faulks.* You mean to say he he did not or you don't know?

*Witness.* I mean to say that Governor Hill's books were kept in such minute detail by Miss Stafford, being a series of ledgers, single entry and double entry, on which every transaction was entered, even the checks drawn which he used as a personal account, pocket money; he entered every business transaction, everything that he owned, everything that he sold, and running down through the books we are able to trace from the time that he started in to own Eastern Steamship Company stock, which was years ago, the original corporation, we can find just where the shares and bonds came from and where the money was paid out, and nowhere on his books is there any reference or any payment or anything of any kind to show that he owned any of the stock referred to or the note referred to.

*Mr. Faulks.* Your inference is that because his books were so carefully kept, that he kept a record of all his business transactions, and there is no record with reference to these papers?

*Witness.* Yes, I am sure that if Governor Hill had owned it, it would have been entered on the books.

*Mr. Ward.* I move to strike out the witness's answer on the ground that it is hearsay.

Q Did his books show where he ever expended $1,500,000 or thereabouts in the purchase of a note for $1,500,000?

*Mr. Faulks.* Same objection.

A Not the slightest payment of any kind or any part of it.

Q Did you go through his books carefully? A I have with Miss Stafford.

Q In making this search? A Yes.

Q Who kept those books? A Miss Stafford.

Q Did you examine the books left by him to ascertain whether or not he ever owned 28,000 shares of the capital stock of the Metropolitan Steamship Company of Maine between March 1, 1910, and the time of his death? A Yes, as attorney for the estate, with his wife and son and stepson, I went through all his books and papers for the purpose of ascertaining what property there was, to make an appraisal that was to go to the Probate Court, and when we finished we had appraised what we knew belonged to him.

Q Did you include these 28,000 shares of stock in your appraisal? A We did not, because he didn't own it.

*Mr. Ward.* Objected to as immaterial and irrelevant.

Q Did you include the note for $1,500,000 in the appraisal?

*Mr. Ward.* Same objection.

A We did not, because he didn't own it.

Q Did you include in the appraisal the 8,500 shares of stock of the Eastern Steamship Corporation? A We did not; it was marked upon the envelope to whom it belonged.

Q Did you ever examine the books of Governor Hill to ascertain whether or not he owned, between January 1, 1912, and the time of his death, $1,700,000 par value of bonds issued by the Eastern Steamship Corporation?

*Mr. Ward.* Same objection.

A Yes.

Q What did you find? A No reference in any way and no payments in part or in whole on account of any such transaction.

Q Did Governor Hill ever state to you anything about owning the note executed by the Billard company for $1,500,000? A He did not.

Q Executed to the Billard company by the New England Securities Company, I mean? A You will observe that it is payable to the Billard company and is not endorsed by anyone, except so far as there is an endorsement of payment, and whose handwriting it is we do not know.

Q Did Governor Hill ever say anything to you about owning 28,000 shares of the capital stock of the Metropolitan Steamship Company of Maine? A He never did.

Q What became of the certificate for 8,500 shares of the Eastern Steamship Corporation stock purchased by the Eastern Securities Company?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A That was certificate No. 21, dated January 10, 1912, in the name of John F. Hill, with an assignment in blank, signed by John F. Hill,

under date of January 11; when we saw this 8,500 shares of stock—the certificate, I said, that is, of 8,500 shares of stock which was purchased by the Eastern Securities Company—and it belongs apparently to the Eastern Securities Company, as endorsed by the Governor—in order that there might not be any suspicion or question that our inventory was correct, and if it should be found that the number of shares of stock of the Eastern Steamship Corporation of his was less than this would be, we thought that the only proper thing to do was to have that stock transferred unto the name of the corporation that it was intended for, and Mr. Liggett took the stock certificate and it was exchanged, and in the place of it was issued this temporary certificate No. 447, standing in the name of the Eastern Securities Company, and that has been kept in the envelope in the place of the original certificate of stock.

Q The original certificate for 8,500 shares of stock issued by the Eastern Steamship Corporation which had been purchased by the Eastern Securities Company was found in this envelope, Exhibit C. 153? A It was.

Q After Governor Hill's death? A It was.

Q Along with his other papers? A It was.

Q And then after finding that certificate what did you do with it? A We gave it to Mr. Liggett to take to the Eastern Steamship Corporation and have the transfer made into the name of the Eastern Securities Company.

Q Who is Mr. Liggett? A John E. Liggett is the stepson of Governor Hill.

Q How long after you delivered it to Mr. Liggett was it before you received this temporary certificate No. 447? A I cannot tell you;

within a few days—it was a short time afterwards; I have no way, I think, of knowing just when it was; as soon as the transfer was made and as soon as I received it, I put it in the envelope.

Q Who endorsed the certificate for 8,500 shares of stock that was found in this envelope? A The certificate itself was not endorsed, but there was an assignment in blank attached to the certificate, endorsed in blank by Governor Hill.

Q But the name of the endorsee was left blank? A I think so; I am not sure, but I think it was in blank.

*Mr. Brown.* I offer this certificate No. 447 in evidence.

*Mr. Faulks.* Objected to as irrelevant, immaterial and incompetent.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 156.)

"8500

No. 447.

Temporary Certificate 8500 Shares.
To Be Exchanged For An Engraved
Certificate When Such Certificates
Are Ready For Issue.

EASTERN STEAMSHIP CORPORATION.

Incorporated under the Laws of the State of Maine, U. S. A., Authorized Capital, $6,075,000.
Divided Into 61,500 Common Shares, Par Value $50. Each And 30,000 Preferred Shares, Par Value $100 Each.

Augusta, Me.

This is to Certify that Eastern Securities Company is the registered holder of Eighty-

five hundred shares of the Common Stock, full paid and non-assessable, of the EASTERN STEAMSHIP CORPORATION, subject to its certificate of incorporation and by-laws, transferable only by assignment in writing, signed by the registered holder hereof, his attorney legally constituted or his legal representative, on surrender of this certificate.

The preferred stock is entitled to receive, when and as declared by the Board of Directors, from the surplus or net profits after amounts determined upon shall have been reserved as working capital, a dividend or dividends in the aggregate in each year amounting to, but never exceeding the sum of six dollars $6.00 on each share of such stock in preference and priority to the declaration or payment of any dividend on the common stock, which dividends on such preferred stock shall, after December 31, 1913, be cumulative; and in the event of liquidation, dissolution or winding up of the corporation, the holders of preferred stock shall be entitled to be paid one hundred dollars ($100) per share, together with any accumulations, after December 31, 1913, of unpaid dividends, at the above specified rate thereon, out of the capital or funds of the corporation, or proceeds thereof, before any amount shall be paid therefrom to holders of the common stock. For an exact statement of the preferences, and the rights and privileges attached to the company's shares, reference is hereby made to the company's by-laws.

This certificate shall not be valid until signed by the Transfer Agent and Registrar.

WITNESS, the seal of the Company, and the signatures of its President or Vice-President, and Treasurer or Assistant Treasurer, this day

Jun 10 1912

Josiah W. Hayden Treasurer F. A. Jones Vice-President.''

(Across center of Certificate) ''COMMON.''

(On the left side of certificate)

''Registered: Boston Safe Deposit & Trust Company,

Registrar. By For Assistant Secretary.''

(On the right hand side of certificate)

''Countersigned. Old Colony Trust Company,

Transfer Agent By J. W. Bird Assistant Secretary.''

Q Do you know what corporations John F. Hill was a director in or connected with prior to his death?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

*Mr. Ward.* Same objection.

A No, I do not, not all of them.

Q Do you know any of them? A He was a director of the Maine Central Railroad.

Q Was he a man of considerable means? A Yes.

Q What became of the certificate for 495 shares of the capital stock of the Eastern Securities Company that was issued to John F. Hill?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection. I ask the witness to confine his answer to personal knowledge.

Q Have you the original certificate book of the Eastern Securities Company? A Yes.

Q What is the number of that certificate? A (After examining the book.) No. 6.

Q For how many shares? A 495 shares.

Q Do John P. Hill's books show anything about that certificate? A None of those transactions, the certificates or anything, appear upon his books; all that we know appears from the evidence, and in that last letter it is stated that he is forwarding certificate to Mr. Robbins.

*Mr. Faulks.* I move that the last part of the answer be stricken out; the letter was objected to and speaks for itself.

*Mr. Ward.* Same objection.

Q Have you ever heard from Mr. Robbins about this certificate since the death of Governor Hill? A Not directly.

Q Have you ever heard from anyone else about this certificate? A No.

Q It has not been presented for surrender? A Never.

Q And transfer? A Never. This stock certificate book is all we have; the certificates are not here.

Q What business is the Eastern Securities Company engaged in? A It has been excused from doing business. It has never done any business but that one transaction.

Q The only property it owns, so far as you know, is the property about which you have just testified? A All of record that appears is the 8,500 shares of stock.

Q It has owned no other property, so far as you know? A No.

Q It has transacted no other business? A No.

Q Except the holding of this 8,500 shares of stock? A Excuse me, the next February, February 17, 1913, Mr. Liggett, who is a director—was a director, and I think is, of the Eastern Steamship Corporation, asked me if we wouldn't send in to—whoever it was in that company that were taking proxies for the coming meeting; you know that a good many times a corporation meeting is held and you hold a proxy that runs to certain persons; I cannot tell you about this, but I can tell you about some other corporations—it was to Calvin Austin—I have it here—Calvin Austin, Galen L. Stone, R. A. Pepper and F. A. Jones, and Mr. Liggett asked me if the proxy of the corporation wouldn't be executed, running to those people; he said that it was to act on the stock in the usual way.

Q That is, the Eastern Securities Company as a stockholder in the Eastern Steamship Corporation had voted that stock at meetings of the stockholders of the Eastern Steamship Corporation? A Just once, which was on February 17, 1913.

*Mr. Faulks.* You don't know whether it was voted then or not?

*Witness.* I do not know anything about it. I know Mr. Liggett asked if I wouldn't make out that proxy and send it in, and I understood from him that these were the people that were receiving the proxies, precisely the same as in the Maine Central meeting, the officers of the corporation received the proxies. Mr. Weston and I held

a meeting and I executed it in legal form and it was sent in, and with that exception, that was the only thing that was done, and in order not to continue to pay the franchise tax—it was only a small sum, of course, five dollars a year, but even to save that, the corporation was formally excused on June 7, 1914, and under our law, the excuse from filing returns means that the corporation is put to sleep and is not required to make any return or pay any franchise until it resumes doing business; the charter still has life in it.

Q Have you produced all the books and papers and records of Governor Hill relating to the organization of the Eastern Securities Company and the purchase of property by it and expenditures made by the Eastern Securities Company? A I produced them as far as you asked me, but I have more papers here.

Q What are those papers; will you let me see them? A The first is the deposit book in the State Trust Company of the Eastern Securities Company.

Q Is this book which you have produced the deposit book of the Eastern Securities Company with the State Trust Company of Augusta, Maine? A It is.

Q Is that the only deposit book it ever owned or used? A Yes.

Q Is this the only moneys or funds it ever deposited in bank? A It was; that is the $50,000 check (producing check).

*Mr. Brown.* I offer in evidence this deposit book produced by the witness.

*Mr. Faulks.* I object to the reception in evidence of the book on the ground that it is immaterial, irrelevant and incompetent.

*Mr. Ward.* Same objection.

*Mr. Faulks.* I also ask that there be stricken out the last part of the witness's answer to the last question.

(Marked Exhibit C. 157.)

*Mr. Brown.* The check for $50,000 has already been offered in evidence.

Q Does this entry in the deposit book of the Eastern Securities Company with the State Trust Company on January 16 of $50,000 have reference to the check which has already been offered in evidence, signed by Governor Hill, payable to the order of the Eastern Securities Company, marked Exhibit C. 137b?

*Mr. Faulks.* Objected to as irrelevant, immaterial and incompetent.

*Mr. Ward.* Same objection.

A Yes.

Q Have you any other record? A I have here the check book of the Eastern Securities Company.

Q Is that the original check book used by the Eastern Securities Company? A Yes.

Q Is that the only check book? A Yes.

Q Does it contain the record of all the checks that were ever drawn by the Eastern Securities Company? A Yes.

*Mr. Brown.* I offer in evidence the first page of this check book produced by the witness.

*Mr. Faulks.* Objected to as immaterial, irrelevant and incompetent.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 158.)

| Deposits | Amounts | Checks drawn | Amounts |
|---|---|---|---|
| 1912 Balance forward | | | |
| Jan. 16 Dep | 50,000 | No. 1 date Jan. 16/ 1912 order of John F. Hill for 8,500 | 49,800 |
| | | ESSCorp Conv No. 2 date Jan. 16/1912 order of John F. Hill advanced in payment of cost of organization, Atty's fees, State tax fees, stock book, seal, etc. | 200 |

*Witness.* I wish to make a statement here of facts which you have not brought out, and I ask the privilege of making this statement as counsel for the estate, in order that you may know all that we know about it.

Q Have you any other records which would show anything about these matters which have been inquired about? A I have.

Q Will you produce those records? A I will. There were as you have brought out in evidence, two checks received by Mr. Robbins— three checks.

*Mr. Faulks.* I object to this method of examination; the witness has been afforded the fullest opportunity to make all sorts of explanations and confer with Governor Hill's stenographer, and I think it is entirely improper that he should volunteer any further explanation or volunteer to furnish counsel for complainants with papers which have not been called for.

*Witness.* May I enter in the record that personally the estate has no interest in this matter, either one way or the other, and has not conferred with either side; that we are simply interested in having the full truth brought out.

Q Will you state whether or not the estate of John F. Hill has any interest in this stock of the Eastern Steamship Corporation, this 8,500 shares of stock? A Not the slightest, and I wish to say that—

Q Will you state whether or not the estate of John F. Hill owns or claims any interest in the note for $1,500,000 executed by the New England Securities Company, payable to the order of The Billard Company? A It does not, and I wish to show that the $50,000—

*Mr. Faulks.* I object to the witness making any voluntary statements; I shall insist upon their being stricken from the record, if he makes them.

Q Will you state whether or not the estate of John F. Hill, or the executors of the estate of John F. Hill, owns or claims any interest in the stock of the Eastern Securities Company? A It does not.

Q Do you know whether or not all the sums paid by John F. Hill in the organization of the Eastern Securities Company and in the purchase of property by the Eastern Securities Eastern Securities Company, were reimbursed? A Not one cent was paid by him; he was reimbursed for every cent.

Q You have produced, in response to my request, a check for the sum of $123.35, signed by Thomas H. Bodge, assistant treasurer, drawn on

the State Trust Company of Augusta, Maine, dated January 12, 1912; whose endorsement is on the back of that check? A John F. Hill, treasurer.

Q Do you know what this check was drawn for? A It was to reimburse him for the $123.-35 paid me for the fees and expenses of organizing the corporation.

*Mr. Brown.* I offer this check for $123.35 in evidence.

*Mr. Ward.* Same objection as made heretofore.

*Mr. Faulks.* I object to the reception in evidence of this check on the ground that it is irrelevant, immaterial and incompetent.

(Marked Exhibit C. 159.)

"STATE TRUST COMPANY
of Augusta, Me.

Augusta, Me. JAN 12 1912 191 No. 2461

Pay to the
order of John F. Hill $123* $123/35

One hundred twenty-three & 35/100 Dollars

Thos. H. Bodge,
Asst. Treasurer."

(Stamped)

STATE TRUST CO.
PAID
JAN
13
1912
AUGUSTA MAINE

(Endorsed)

"For deposit in
State Trust Company,
Augusta, Maine,
to the credit of
JOHN F. HILL, INC.
John F. Hill Treas"

Q You have produced a check signed by Thomas H. Bodge, Assistant Treasurer, drawn on the State Trust Company of Augusta, Maine, dated January 12, 1912, payable to the order of John F. Hill, for the sum of $5,489.15; do you know what that check was for? A I do.

Q What was that check for? A It was the balance after deducting $123.35 of the check sent by Mr. Robbins amounting to $5,612.50.

Q Is that the check that has been referred to in the correspondence? A It was. Those two checks together make up the total of that check.

*Mr. Brown.* I offer in evidence the check for $5,489.15.

*Mr. Faulks.* Objected to on the same grounds.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 160.)

"STATE TRUST COMPANY

No. 2849. Augusta, Me., Jan. 12, 1912. 191

Pay to the

order of John F. Hill $5489+

$5,489 15/100. Fifty-four hundred eighty-nine & 15/100 Dollars

To the

Merchants National Bank,

Boston, Mass.

Thos. H. Bodge,

Asst. Treasurer."

(Endorsed)

"Pay to the order of

Edward D. Robbins

John F. Hill."

"PAY SECOND NATIONAL BANK,

New Haven, Conn., or order,

Edward D. Robbins."

"Pay to the order of
Any Bank, Banker,
or Trust Company
Jan 16, 1912.
All Prior Endorsements Guaranteed,
Second Nat'l Bank
New Haven, Conn.

Chas. A. Sheldon, Cashier."
"Received Payment
Through the Boston Clearing House
39 Jan. 17, 1912. 39
FIRST NATIONAL BANK
Of Boston, Mass.
Prior Endorsements Guaranteed."

*Mr. Ward.* You understand these checks to be drawn against the account of the Eastern Securities Company?

*Witness.* No, they were not; none of the checks sent by Mr. Robbins was drawn against that account. Every one of the checks was taken to the State Trust Company—two or them—and deposited in the name of Governor Hill, and his check for $44,000 sent back to Governor Hill, and the check for $123.35 plus the other check makes up the $5,612.50, and all of Mr. Robbins' three checks amount to just $50,000.

*Mr. Ward.* Mr. Bodge is the assistant treasurer of the State Trust Company?

*Witness.* Yes; so that the $50,000 was sent to Governor Hill.

*Mr. Ward.* I make the further objection to Exhibits C. 159 and C. 160, that the endorsements are not proved.

Q I show you Exhibit C. 160, which has just been offered in evidence; whose handwriting is the endorsement at the top? A John F. Hill's.

Q Were you familiar with the signature of John F. Hill? A Very; anyone once having seen it—no one could ever mistake it.

Q Have you any other records relating to the Eastern Securities Company transaction? A I have not.

*Mr. Faulks.* No cross examination.

*Mr. Ward.* No cross examination.

*Mr. Brown.* Will you keep these original exhibits accessible, Mr. Bassett, in case we have to refer to them?

*Witness.* You understand I do not want them to go out of my possession, and that is why I made copies.

M. CATHERINE STAFFORD, sworn for complainants.

*Direct examination* by Mr. Brown.

Q Where do you live? A Holloway, Maine.

Q You do not reside in the State of New Jersey, do you? A No, I do not.

Q Did you know ex-Governor John F. Hill during his lifetime? A I did.

Q How long had you known him prior to the time of his death? A About twenty years.

Q Did you have any connection or relationship of any sort with him, business connection? A Yes, I did.

Q What was that connection? A Well, I worked in his office and I also kept his own personal books.

Q When did you commence working in his office? A I cannot tell you exactly how many years.

*Mr. Faulks.* Prior to 1910, wasn't it?

*Witness.* Yes.

*Mr. Brown.* That will do.

Q You worked with him up to the time of his death? A I did.

Q State what you did, in a general way, in connection with his affairs. A With his own private business?

Q With his own private business and with any business that you had with him; what were your duties? A I kept his books.

Q His personal books? A Yes; his personal books, and I also worked for him in the publishing business; I looked after the advertising.

Q Was he in the publishing business? A Yes.

Q What other business matters did you attend to for him? A That is all.

Q Were you located in his office here in the City of Augusta? A I was.

Q Who had charge of the office? A He had charge of the office.

Q Who next to him had charge of it? A He was the one who had charge.

Q When he wasn't there who had charge? A I don't know; I guess there wasn't anybody.

Q Each person attended to their own duties and didn't bother about the other person? A Yes.

Q Who had charge of Governor Hill's check book? A I did.

Q Who drew his checks? I did.

Q Who had charge of his cancelled checks when they were returned? A I did.

Q Who had charge of his bank book? A I did.

Q Were you associated with him on January 1, 1910? A Yes.

Q Have you made an investigation of the books left by Governor Hill, to ascertain whether or not he ever owned $1,700,000, par value, of the bonds issued by the Eastern Steamship Corporation? A I knew he didn't without investigating.

Q How did you know he didn't? A Because I knew he couldn't without my knowing it.

*Mr. Ward.* I object to this and similar questions, on the same grounds as stated heretofore.

*Mr. Faulks.* I do, too; I think the questions ought to be confined to what the Governor's books showed. If Miss Stafford has familiarity, with those books, as I assume that she has, then she could be asked very properly as to what the books show, and I think that ought to be the range of the examination.

*Mr. Brown.* In view of her answer, I thought she had some knowledge independent of the books.

Q Have you made an examination of his books since his death, to determine whether or not he owned $1,700,000 worth of bonds issued by the Eastern Steamship Corporation? A No, I haven't examined them to find out, because I knew that he didn't.

Q Did you make all the entries in those books that you would have examined, which would have disclosed that fact? A I did.

Q You know that you never made any entries in his books showing the purchase by him of $1,700,000, par value, of bonds issued by the Eastern Steamship Corporation? A I do.

Q At no time since January 1, 1910, did he ever own any such bonds?

*Mr. Faulks.* I object to that upon the ground just stated; I insist that the question is improper.

A His books do not show that he ever owned any.

Q Did you ever see those bonds in his possession? A No.

Q Do his books show the disbursement by him of any sums for said bonds? A No.

Q Do his books show the ownership by him of 28,000 shares of stock issued by the Metropolitan Steamship Company of Maine? A They do not.

Q Since March 1, 1910? A They do not.

Q Did you ever see that 28,000 shares of stock issued by the Metropolitan Steamship Company of Maine in his possession or among his assets? A I have never seen any.

Q Did you also have charge of his personal files? A What do you mean, in so far as relates to the books?

Q In relation to the books or any files of records or papers kept by him showing his assets? A Yes.

Q You never saw these bonds or stock? A Do you mean the securities?

Q Yes, the securities. A Well, I am not in possession—I never had possession of them.

Q Were you Governor Hill's confidential secretary? A I never had any title; I always kept his books.

Q Do his books show the ownership by him of a note for $1,500,000, executed by the New England Securities Company, payable to The Billard Company? A No, they do not.

Q Did he require you to keep an accurate set of books showing his financial transactions? A Yes, he did.

Q And did you carry out his instructions in this regard in detail? A Yes, I did.

Q Have you produced in response to our subpoena, a book showing the account of Governor Hill with the Eastern Securities Company? A I have.

Q Have you that book with you? A Yes.

Q Where is it? A (Producing same.) This is the book.

Q Will you turn to the page of that book showing Governor Hill's account with the Eastern Securities Company? A Yes, sir. (Referring to page 287 of the ledger.)

Q What book is this that you produce? A Ledger.

Q Is that Governor Hill's personal ledger? A Yes.

Q Marked "Ledger" on the back, and "John F. Hill" beneath? A Yes.

Q What period of time did this ledger cover?

*Mr. Faulks.* Does it extend back prior to January 1, 1912?

*Witness.* It does.

*Mr. Faulks.* And continues down to the time of his death?

*Witness.* Yes.

Q On page 287, under the head of Eastern Securities Company, there appear certain entries; state who made those entries. A I made them.

Q They are in your handwriting? A They are.

*Mr. Brown.* I offer in evidence this entry on page 287 of the ledger.

*Mr. Faulks.* Is this a book of original entry?

*Witness.* It is.

*Mr. Faulks.* The entries that appear on this page 287 are not carried forward from any day book or cash book?

*Witness.* These are forwarded from a cash book.

*Mr. Faulks.* Did you make the entries in the cash book?

*Witness.* Yes, I did.

*Mr. Faulks.* And these are correct transpositions of them into the ledger, are they?

*Witness.* Yes.

*Mr. Faulks.* I object to the reception of this exhibit, on the ground that it is immaterial and irrelevant.

*Mr. Ward.* I object also on the ground that the entries are incompetent.

(Marked Exhibit C. 161.)

"EASTERN SECURITIES CO.

| Dr. | | Cr. |
|---|---|---|
| 1912 | 1912 | |
| Jan. 15. | Jan. 16. | |
| To cash 107 50,000 | By cash 104 50,000." | |

Q Does this book also contain an account between ex-Governor John F. Hill and E. D. Robbins? A Yes, it does.

Q Did you keep that account also? A I did.

Q I show you on page 287 of the same ledger, to which we have just referred, an account under the name E. D. Robbins; will you state what that is? A What do you mean?

Q Is that the account between E. D. Robbins and ex-Governor Hill? A Yes, it is.

Q Is that in your handwriting? A It is.

Q Did you make these entries? A I did.

*Mr. Brown.* I offer that account in evidence.

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 162.)

"E. D. ROBBINS.

| Dr. | | Cr. | |
|---|---|---|---|
| 1912. | | | |
| Jan. 15. | | Jan. 15. | |
| To cash 107 | 44,387.50. | By cash 104 | 44,387.50. |

Q Have you the book which shows the details of these items? A Yes, I have.

Q Where is that book ? A It is right here. (Producing cash book.) (Referring to page 104.) This is the entry showing the receipt of the cash.

Q You produce a book endorsed "Cash, John H. Hill"; is that one of the books kept by you? A Yes.

Q As secretary of Mr. Hill? A Yes.

Q What does this book show generally? A It shows all the cash that he received and all that he paid out.

Q On page 104 of this book I show you an item "E. D. Robbins, $44,387.50," under date of January 15, 1912; what does that entry mean? A It means that Governor Hill received a check from Mr. Robbins for that amount.

Q That is on the debtor side? A That is on the debtor side, yes, sir; that is a check he received.

Q Do you know what was done with that check? A No, I do not. It was deposited to the credit of Governor Hill at the State Trust Company; that would be in Mr. Robbins' possession.

*M. Catherine Stafford, direct.*

Q What was this entry made from? A The check was brought to my desk by Governor Hill and I made a deposit slip of that, keeping a duplicate myself, and then entered it in my cash book.

Q To the right of E. D. Robbins' name on this page appears the figures 287; to what does that refer? A The book in the ledger to which that was posted.

Q The page 287 referred to the page in the ledger in which this entry was entered? A Yes.

Q And this item of $44,387.50, appearing on page 104 of this cash book is the same item that is entered on page 287 of the ledger, under the name of E. D. Robbins? A It is.

*Mr. Brown.* I offer this entry in evidence, on page 104 of the cash book.

*Mr. Faulks.* I make the same objection as I did with reference to the offer on page 287 of the ledger, and also desire to have that objection extend to the testimony that the witness has given with reference to the entry in the cash book.

*Mr. Ward.* Same objection as to the offer of the ledger account, C. 161 and C. 162.

(Marked Exhibit C. 163.)

"DR.

Jan. 1912.

15. 287 E. D. Robbins 44,387.50."

Q On the credit side where is the entry showing how that was paid out? On page 107 of this cash book which you have produced, there appears on the credit side of the book, under date of January 15, 1912, the following: "287;" what does that refer to? A The page

in the ledger to which that account was posted.

Q "E. D. Robbins 44,387.50," what does that entry mean "44,387.50?" A It means that Governor Hill gave his check to E. D. Robbins for that amount, $44,387.50.

Q Is this entry in your handwriting? A It is.

Q You kept this book? A Yes.

*Mr. Brown.* I offer in evidence the entry on page 107 of the cash book, on the credit side.

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 164.)

"CASH Cr.

1912
Jan.
15 287 Edward D. Robbins 44,387.50."

Q On page 104 of this cash book which you have just produced, on the debtor side, under date of January 16, 1912, appears an entry "Eastern Securities Company $50,000;" is this entry in your handwriting? A It is, yes.

Q The same book which was kept by you? A Yes.

Q What does that entry mean? A That means that Governor Hill received from Eastern Securities Company a check for that amount of money.

*Mr. Brown.* I offer this entry in evidence on page 104 of the same book.

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 165.)

*M. Catherine Stafford, direct.*

"Dr. Cash.
Jan. 1912
16th 287 Eastern Securities Co. 50,000."

Q This entry of $50,000 to the credit of Eastern Securities Company is the same entry that is posted in the ledger which we have just offered in evidence? A Yes, the same one.

Q I show you in the cash book on page 107 an entry, under date of January 15, 1912, Eastern Securities Company, $50,000; what does that mean? A That means that that was the amount of the check that Governor Hill drew in favor of the Eastern Securities Company.

Q Is this entry in your handwriting? A It is.

Q This book was kept by you? A It was.

*Mr. Brown.* I offer in evidence that entry on page 107.

*Mr. Ward.* Same objection as heretofore.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 166.)

1912 "Cash Cr.
Jan. 15 287 Eastern Securities Co. 50,000."

Q That entry of $50,000 is the same entry that is posted in the ledger about which you have already testified? A Yes, it is.

Q Have you any other books relating to these items? A I haven't anything else.

Q Have you any book relating to the payment or disbursement of any sums in connection with the Eastern Securities Company? A I have not. That is the journal that goes with that ledger (indicating), but it has no items in it in reference to the Eastern Securities Company or E. D. Robbins.

Q Or any of these entries? A No, none of them.

Q Have you also kept the books for the executrix of Governor Hill? A Yes.

Q Just as you kept them for him before his death? A I have.

Q You continued in your capacity since his death just as you did before? A Yes.

Q Did you draw all of the checks drawn or signed by Governor Hill on his bank? A Yes, I did.

Q Both large and small? A Yes; once in awhile, of course, he drew a counter check, a little cash.

Q Those counter checks, however, would always be returned? A Yes.

Q And come into your possession as his secretary? A Yes.

Q Have you any record of this check for $5,489.15, Exhibit C. 160? A I have none.

Q Have you any record whatever of check, Exhibit C. 159, for the sum of $123.35? A I have none.

Q Have you seen the handwriting endorsed on the back of Exhibit C. 153, the large envelope which was offered in evidence? A I saw it here this afternoon.

Q Do you know whose handwriting that is? A Yes.

Q Whose handwriting is it? A Governor Hill's. (Referring to endorsement on envelope, Exhibit C. 153.)

Q Did you know for whom Governor Hill was organizing the Eastern Securities Company? A I knew nothing about it.

Q Will you state whether or not the books kept by the executrix of the estate of Governor

Hill show the entry as owned by the estate of a note for $1,500,000, executed by the New England Securities Company? A They do not.

Q Do those books show the ownership by the estate of $1,700,000 bonds of the Eastern Steamship Corporation? A They do not.

Q Do those books show the ownership of 28,000 shares of stock issued by the Metropolitan Steamship Company of Maine? A They do not.

Q Was any entry made in Governor Hill's books of a check for $34,387, received from Edward D. Robbins, drawn on the Second National Bank of New Haven, and a check for $10,000 drawn on the City Bank of Hartford? A The thirty-four and the ten would make just that forty-four, wouldn't it? Possibly that was in two checks; I don't recall.

Q Will you state whether or not the books kept by the executrix of the estate of John F. Hill show the ownership of the 8,500 shares of stock of the Eastern Steamship Corporation? A They do not.

Q Did Governor Hill own any property, so far as you know, that was not entered on his books? A No, he didn't.

Q Was all the other property that was found, belonging to the estate of Governor Hill after his death, entered on his books? A You mean all the property that was inventoried?

Q Yes. A Yes, it was.

Q Do you know Mr. Edward D. Robbins? A No.

Q Did you ever see him? A No.

Q Did you ever hear Governor Hill speak of him?

*Mr. Faulks.* Objected to as immaterial and irrelevant, and calling for hearsay evidence.

*Mr. Ward.* Same objection.

A I might have heard him mention his name, perhaps, but never to make any conversation about him.

Q State whether or not Governor Hill told you about his financial transactions. A Yes, he did.

Q He always told you of all his financial transactions? A Sooner or later they came to my desk to be entered on the books.

*Mr. Faulks.* He told you what he wanted to go on the books?

*Witness.* All his financial transactions did go on the books.

*Mr. Faulks.* And when he did, he told you about them, in order that they might be put on the books?

*Witness.* Yes.

Q Did he keep a letter file in which letters received by him were filed? A Yes, he did, but I didn't have charge of that.

Q Do you know in what corporations Governor Hill was a director?

*Mr. Faulks.* Objected to as immaterial.

*Mr. Ward.* Same objection.

A I know he was a director in the Maine Central, and just now I don't recall what others.

Q Who mailed his letters? A I think usually they were put in with the office mail and taken out when the other office mail was taken out.

Q You are not a stenographer? A No.

*George C. Libby, direct.*

Q You didn't take any of his letters? A No.

Q Did you have any supervision of any kind over his letters? A No.

Q You didn't examine them after they were written? A No.

Q Were all the books, records and papers that were left by Governor Hill at the time of his death taken possession of after his death by Mrs. Laura Hill, the executrix? A What do you mean; that she took them from the office?

Q No, I mean did she, as executrix, take possession of them, not personal possession; did you remain in the office after his death? A Yes.

Q And those books and records were still in that office? A Yes.

Q They were not taken out of the office after his death A No, they were not.

*Cross examination* by Mr. Ward.

Q Do the books of Governor Hill show that he ever owned or acquired or possessed any securities of the Pacific Navigation Company? A No, they do not.

*Mr. Faulks.* No cross examination.

GEORGE C. LIBBY, sworn for complainants.

*Direct examination* by Mr. Brown.

Q Where do you reside, Mr. Libby? A Augusta, Maine.

Q How long have you resided here? A With the exception of two or three years, fifty years.

Q You do not reside in the State of New Jersey? A No, sir.

*George C. Libby, direct.*

Q In what business are you engaged? A Treasurer of the State Trust Company.

Q How long have you been treasurer of the State Trust Company? A Since its organization in 1906.

Q What are your duties generally as treasurer? A General supervision of the business received, deposits, pay out money, discount notes, with the approval of the Board of Trustees.

Q Do you pay checks? A I do.

Q That is, when checks are presented over the counter by the people, signed by your customers, your depositors, you pay those checks? A I do.

Q How long have you been engaged in doing that part of the work? A Always.

Q You are familiar with the signatures of your depositors? A I think so.

Q Will you produce the account of the Eastern Securities Company with the State Trust Company? A Yes.

Q Where is the account; what book is it in; have you the book? A Well, I haven't the ledger here, it is quite a large book; I can tell you, of course, all the transactions which took place without it, as regards the Eastern Securities Company, or I will produce the ledger, if necessary. There is only one entry.

*Mr. Faulks.* What is it, the deposit of $50,000?

*Witness.* Yes.

*Mr. Faulks.* If you are positive about it, Mr. Libby, and you testify with the same particularity that you could if the books were here, I will waive the objection to the books not being here.

Q Have you examined the books recently? A Yes, as regards this one account.

Q What does the account show? A I found that on January 15, 1912, Eastern Securities Company deposited $50,000, and then the $50,000 was at once drawn out.

Q Any other entries in that book? A No.

Q Was it drawn out the same day? A Drawn out the same day.

*Mr. Faulks.* It is understood we make the same objection to this evidence, as if the books were here, namely, that it is immaterial and irrelevant.

*Mr. Ward.* Same objection.

Q Was the account closed at that time? A We closed the account that day, yes, sir.

Q Have they deposited anything in your bank since that time? A Nothing since.

Q With respect to the account of ex-Governor Hill, will you state whether or not on or about the 12th day of January, 1912, he deposited any funds in your bank? A Yes, on the 12th day of January, 1912, he deposited a check of The Billard Company on the First National Bank of Boston, for $5,612.50.

*Mr. Ward.* My general objection, of course, goes to this line of testimony, Mr. Brown.

*Mr. Faulks.* I think that is understood, Mr. Brown, that we make the same objection to this entire line of testimony?

*Mr. Brown.* Yes

Q At what other time did he make a deposit? A On the fifteenth of January he deposited a check of Edward D. Robbins on the Second Na-

tional Bank of New Haven for $34,387.50, and another check of Edward D. Robbins on the City Bank of Hartford for $10,000.

Q And at that time what checks did he draw or purchase from you that were charged against that deposit? A On January 12 we gave him our check on the Merchants National Bank, No. 2849, for $5,489.15.

Q To whose order was that payable? A John F. Hill, and we also gave John F. Hill a check, payable to his order, drawn on ourselves, our treasurer's check No. 2461, for $123.35.

Q Is this the check for $5,489.15 that you have just mentioned? A That is the one.

Q Being Exhibit C. 160; will you look at the signature on that check? A Yes.

Q That is the signature of Mr. Bodge? A That is the signature of Mr. Bodge, my assistant.

Q That is, it is a check signed by Thomas H. Bodge, assistant treasurer, on the Merchants National Bank of Boston, dated January 12, 1912, for the sum of $5,489.15? Whose handwriting is that on the back of that check? A That is Governor John F. Hill's.

Q Do you know his handwriting? A Yes, sir, I do.

Q That is, the first writing on top of the check is in the handwriting of John F. Hill? A That is all in his handwriting.

Q Will you state whether or not that check was paid? A Yes, it was paid by the Merchants Bank on the 17th day of January.

Q You keep an account with the Merchants' National Bank of Boston? A We do not at this time; we did at that time.

Q The State Trust Company drew this check on the Merchants National Bank of Boston? A It did.

Q That is Exhibit C. 160? A Yes. And delivered it to John F. Hill, and it was paid by the Merchants National Bank of Boston, and charged to the account of the State Trust Company.

Q The writing on the top of his endorsement is "Pay to the order of Edward D. Robbins," signed "John F. Hill?" A Yes, that is in the handwriting of Mr. Hill.

Q And this check was returned to your bank, to your trust company, by the Merchants National Bank of Boston in the ordinary course of business? A In the ordinary course of business, yes, sir.

Q I show you check signed by Thomas H. Bodge, assistant treasurer, drawn on and check of the State Trust Company of Augusta, Maine, dated January 12, 1912, for the sum of $123.35, payable to John F. Hill, endorsed "For deposit in State Trust Company, Augusta, Maine, to the credit of John F. Hill, Inc.," signed "John F. Hill, treas.;" is that the other check you have just testified about? A Yes.

Q And that was charged to the account of John F. Hill? A No.

Q What consideration did you receive for the issuance of that? A I received this Billard check, understand, for part of which we gave him the Boston check, the $5,489.15, and the remainder we gave him, the $123.35.

Q These three deposits, consisting of three checks, just tell how that fund was drawn out? A For the check of $5,612.50 that he received, we gave him the Boston check of $5,489.15 and

then gave him our treasurer's check on ourselves, payable to his order, for $123.35.

Q That is Exhibit C. 159? A Yes.

Q Now, then, for those other checks there? A Those were credited to Governor Hill's account, those other checks.

Q And he returned that by his personal check? A Yes.

Q What was the aggregate of those three checks? A $34,387.50 and $10,000 made $44,387.50.

Q I show you Exhibit C. 151, that is a check drawn by John F. Hill on the State Trust Company, payable to the order of Edward D. Robbins, for the sum of $44,387.50; will you state whether or not that check was paid by your bank? A That check was paid by our bank on January 19, 1912, and charged to the account of John F. Hill and canceled.

Q And returned to him? A Yes, the first day of the following month, with his other canceled checks.

Q You are familiar with the examination of signatures that are presented to your bank, are you not? A Yes, I am.

Q I show you Exhibit C. 40, which is a letter dated December 14, 1909, at New Haven, Connecticut, addressed to J. Markham Marshall, 25 Broad street, and signed "Edward D. Robbins;" will you look at that signature? A Yes.

Q I show you Exhibit C. 151, which is the check signed by John F. Hill, payable to the order of Edward D. Robbins, for $44,387.50, and which bears the endorsement "Pay Second National Bank, New Haven, Conn., or order, Edward D. Robbins," and ask you whether or not, in your opinion, those signatures are the same?

*Mr. Ward.* I object on the ground that the witness has not qualified, and a standard of comparison has not been properly proven.

*Mr. Faulks.* I make the same objection, and the further objection that the alleged signature of Mr. Robbins, by which the witness is asked to test the signature on the check, is not thus far proved.

A I should say they were identical.

Q If Mr. Edward D. Robbins were a depositor in your bank and presented the signature which appears on Exhibit C. 40, and then presented a check with this signature endorsed on the back of Exhibit C. 151, would you pay the check? A I should pay the check.

*Mr. Ward.* Objected to as immaterial and irrelevant; this is not the proper way to prove the signature of any person whose signature is desired to be proven.

*Mr. Faulks.* Same objection.

Q I show you again what purports to be the signature of Edward D. Robbins, on Exhibit C. 40; I show you the endorsement on the back of Exhibit C. 160, which purports to be the signature of Edward D. Robbins; will you state whether or not, in your opinion, those signatures are the same?

*Mr. Faulks.* I make the same objection.

*Mr. Ward.* Same objection.

A My opinion is that they were both written by the same person.

Q I show you what purports to be the signature of Edward D. Robbins on Exhibit C. 40; I also show you what purports to be the signature of Edward D. Robbins on Exhibit C. 142,

letter dated January 5, 1912; will you state whether or not, in your opinion, those signatures are the same?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A My opinion is that they were written by the same person.

Q I show you what purports to be the signature of Edward D. Robbins on Exhibit C. 40; I also show you what purports to be the signature of Edward D. Robbins, written on Exhibit C. 145, which is a letter dated January 6, 1912, and ask you whether or not, in your opinion, those two signatures were written by the same person?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A That is my opinion, they were written by the same person.

Q I will ask you whether or not it is a part of your duty as treasurer of the State Trust Company, to examine carefully the signatures of all checks presented on your bank for payment, purporting to be drawn by depositors, and to see that the signature on said checks is the genuine signature of the depositor? A Well, I do not examine all the checks, no, but such as come to me, of course.

Q Do many of them come to you in the course of your duties? A Quite a few; of course the assistant treasurer might take a good many, and the bookkeeper who charges up the checks might take a good many checks.

Q But you do examine quite a number? A Oh, certainly; yes, indeed.

Q How long have you been doing this character of business? A In the banking business twenty-two years and a half.

Q Have you ever had any checks come back on you because you failed to see that the signatures were not genuine signatures of the depositors? A No, I don't recall any.

*Mr. Faulks.* Never passed a bad one?

*Witness.* No.

EXAMINATION CLOSED.

GROVER C. RICHARDS, being duly sworn according to law, on his oath says.

*Direct examination* by Mr. English.

Q Where do you live; where is your home? A Portland, Maine.

Q Are you a resident of the State of New Jersey? A No.

Q Did you live in Portland, Maine, during the early winter and spring of 1910? A Yes.

Q Do you know a lawyer named Chase? A I do.

Q What is his full name, if you know? A Warren D. Chase.

Q Where does he live and practise law, if you know? A Hartford, Connecticut.

Q Through whom did you become acquainted with Mr. Chase? A Mr. Ward of Portland.

Q What is Mr. Ward's full name, if you know? A Benjamin G. Ward.

Q Is he a lawyer? A Yes.

Q Did Mr. Ward introduce you to Mr. Chase? A Yes.

Q Where? A Portland, Maine.

Q About when was that and under what circumstances? A I should say it was in the spring of 1910.

Q And in connection with what business, if any? A Incorporation of the Metropolitan Steamship Company.

Q Of Maine? A Of Maine.

Q I show you a paper which is marked Exhibit C. 15 in this suit, being the certificate of incorporation of the Metropolitan Steamship Company of Maine, and I notice that among the stockholders appears the name of Grover C. Richards, Portland, Maine, 29,995 shares; are you the person named in that paper? A I am.

Q And I see also that this certificate indicates that the treasurer of the company is a Grover C. Richards; are you the same person? A That is right.

Q The same paper indicates that Benjamin G. Ward is the clerk of the company; is he the lawyer that you referred to? A Yes.

Q I see named as one of the stockholders Joseph E. Chase of Portland, Maine; is he any relation to Warren D. Chase? Do you know? A I don't know.

Q It was in connection, you say, with the incorporation of this company that you met Mr. Chase? A Yes.

Q And as appears from the certificate of incorporation, you were the treasurer of the company, is that right? A Yes.

Q Following the incorporation of that concern and your election to the treasurership did you have any occasion to come to the City of New York? A I did.

Q How soon after that, if you remember, approximately? A Within two or three days, I should say.

Q And at whose request did you come on? A Mr. Chase.

Q When you say Mr. Chase, you mean Warren D. Chase? A Warren D. Chase.

Q When you arrived in New York did you meet Mr. Chase? A Not on my arrival, I met him after.

Q I mean after you got here? A Yes.

Q How long did you remain in New York in connection with that general matter? A Very nearly a month, I should say.

Q Where did you have your first meeting with Mr. Chase in connection with any business relating to this matter? A At the Manhattan Hotel.

Q And from there where? A At the bank of the Manhattan company.

Q And at the bank of the Manhattan company who besides Mr. Chase was present with reference to the business? A A Mr. Hemingway and possibly a Mr. Robbins.

Q Do you know whether any other persons were present? A There was one there that I don't remember the name of.

Q You do remember those two? A Yes.

Q Do you know Mr. Hemingway's full name? A No, I do not.

Q You were introduced to Mr. Hemingway? A Yes.

Q And Mr. Robbins? A Yes.

Q You were introduced to Mr. Hemingway? A Yes.

Q Were you introduced to Mr. Robbins? A I wouldn't say that, but if not, it seems that I met Mr. Robbins—and if I did, that was the only place I did meet him at that time.

Q Who did the introducing? A Mr. Chase.

Q Did Mr. Chase tell you who Mr. Hemingway was? A He mentioned him as being a big man in the New Haven.

Q New Haven Railroad? A Yes.

Q He described him in that way, as a big man in the New Haven? A Yes.

Q Did he characterize Mr. Robbins in any way? A I don't remember that he did.

Q What was the business which took you to the bank in connection with these gentlemen at that time; what did you do? A I remember endorsing one check and signing two.

Q As treasurer of the Metropolitan company? A Yes.

Q What was the amount of the check which you endorsed? A $3,000,000.

Q Do you remember approximately the amounts of the two checks which you signed as treasurer? A $1,500,000.

*Mr. Faulks.* Is that the aggregate amount of the two checks?

*Witness.* No, the aggregate would be $3,000,000.

Q Do you know what was done with those two checks after you signed them? A Mr. Chase took them. Further than that, I don't know.

Q Do you know whether he deposited them in the bank, or don't you know about that? A I don't know about that.

Q But you gave them to Mr. Chase? A Yes.

Q How long did you remain at the Bank of Manhattan at that time? A With the parties that I speak of, possibly an hour and a half.

Q Do you remember whose name was signed as maker of this $3,000,000? A Mr. Hemingway.

Q The same gentleman that had been introduced to you by Mr. Chase? A I wouldn't say so.

Q You mean you don't know? A I don't know.

Q But it was signed Hemingway? A Yes.

Q Did either Mr. Chase or Mr. Hemingway say anything to you to indicate to what use any or all of this money was to be put?

*Mr. Faulks.* We object to this question upon the ground that the matter sought to be brought out by it is irrelevant, immaterial and incompetent, and not binding upon or evidential against the defendants or any of them.

A Mr. Chase mentioned that the two checks aggregating $3,000,000 were in payment of the purchase of the Harvard and Yale steamers.

Q Referring to the steamships? A Yes.

Q You were treasurer of the company; to your knowledge did the company have any money prior to the endorsement by you of this $3,000,000 check? A I don't know.

Q If it did have any money, you didn't know it? A Exactly.

Q Did you meet Mr. Chase at any other time after this occasion at the bank which you have been speaking of? A I met him at 25 Broad street one day.

Q Anywhere else? A At the Manhattan Hotel at some other time.

Q You are speaking now of this period of about a month when you were in New York? A Yes.

Q Any other time outside of that period? A Outside of that month?

Q Yes. A Later, yes, in New York.

Q In any conversations which you had with Mr. Chase, what, if anything, did he say relative to his connection, if any, with the New Haven Railroad?

*Mr. Faulks.* I make the same objection to this question that I did to the last question that was objected to.

A In speaking of the taking over of the Boston & Maine by the New Haven, he mentioned that "we are going to make the road so that one can ride with comfort and eat without spilling the liquids."

Q What else, if anything, did he say along that line?

*Mr. Faulks.* Same objection.

A He identified himself in a certain—

*Mr. Faulks.* The question is what he said.

Q Give the substance of the conversation as near as you can remember. A "I represented the New Haven in some deal," which I cannot remember.

Q He said "I represented the New Haven?" A Yes, "I represented."

Q But you cannot remember the deal he mentioned? A No.

Q Can you remember any other conversation of a similar character? A No.

Q After you had finished up the business which kept you in New York about a month, or during March of 1910, when next, approximately after that did you have occasion to be in New York again? A I should say the next fall, the fall following.

Q And at whose request did you come to New York? A By wire from Mr. Chase.

Q Where did you meet Mr. Chase? A At the Aberdeen Hotel.

Q At that time were you still treasurer of the Metropolitan Steamship Company of Maine? A So far as I knew; as much so as I was before.

Q When you arrived in New York in the fall, what business, if any, did you transact or perform as treasurer of the company? A I endorsed a check.

Q Do you remember for what amount? A $69,000.

Q And after you endorsed the check what did you do? A I gave it to Mr. Chase.

Q Did Mr. Chase say anything to you to indicate what use was to be made of the check?

*Mr. Faulks.* Same objection.

A No.

Q Do you know to whose order the check was made payable? A To my order.

Q And endorsed in blank and handed back to Mr. Chase? A Yes.

Q Do you know a Mr. Birdsey E. Case? A Yes.

Q Do you know what city he is a resident of? A I cannot say that I know.

Q Do you know whether he occupied an office in the Metropolitan Steamship Company? A I do, yes.

Q What office was that? A Treasurer.

Q He succeeded you as treasurer? A Yes.

*Cross examination* by Mr. Faulks.

Q Mr. Richards, you say that the $3,000,000 check which you endorsed when you were here in New York in the spring of 1910, was made by Mr. Hemingway? A Yes.

Q Do you know his first name? A No, I do not.

Q That was a check to the order of the Metropolitan Steamship Company? A I don't know.

Q You don't remember that? A No.

Q All you remember is, that it was Mr. Hemingway's check? A Yes.

Q And that it was for $3,000,000? A Yes.

Q The amount of the checks that you signed at that same time also aggregated $3,000,000? A Yes.

Q You say that Mr. Chase told you at that time that those two checks were to be used in paying for the steamships Harvard and Yale? A Yes.

Q When was it that you had this other conversation with him in which you said that he spoke of the taking over of the Boston & Maine? A I should say that was on my return to Portland from the fall visit to New York.

Q Several months after the time that you were down here and signed and endorsed the checks for $3,000,000? A Yes.

Q Was it at that same later time that you say that he also said to you that he had represented the New Haven in some deal? A I wouldn't say that it was then.

Q If it wasn't then when was it? A I cannot say.

Q Where did the conversation with reference to the taking over of the Boston & Maine take place? A On the train between Boston and Portland, I think.

Q Anybody present except you and Mr. Chase at that time? A No.

Q Where did the conversation in which he said that he represented the New Haven in some deal take place? A I don't know; if I could place that, I could remember the time.

Q You cannot remember anything at all about the time or the place? A I think it was in his office in Hartford, Connecticut, but I wouldn't say positively.

Q Do you think anybody else was present? A No.

Q What is your best recollection as to the time when that conversation occurred? A I should say it was during that week of my fall visit here to New York.

*Re-direct* by Mr. English.

Q That check of $3,000,000 which you endorsed was drawn either to the company of which you were treasurer or to yourself personally? A That is evident.

GEORGE A. MacINTOSH, sworn for complainant.

*Direct examination* by Mr. McCarter.

Q You live where, Mr. MacIntosh? A 1373 East 17th street, Brooklyn.

Q What is your business? A I am the secretary of the Butterworth-Judson Company and officer of a number of other corporations controlled by E. M. Davis, 60 Wall street.

Q What other corporations? A The Hearthstone Realty Co., the Bay Park Company, that is another realty company; that is all. I am president of the Hearthstone Realty Company.

Q What position do you say you have with the Butterworth-Judson Company? A Secretary.

Q Are you a member of the bar? A No.

Q How long have you been connected with these three corporations you named? A The Butterworth-Judson Company about seven years, I think.

Q As secretary? A I was secretary and treasurer at one time, and now I am secretary.

Q And the other concerns? A The same time—a little longer for the others.

Q What knowledge, if any, have you touching the organization of the New England Securities Company?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

A The company was organized in the office of Everly M. Davis, 60 Wall street, and I am familiar with the organization of the company.

Q You didn't mention that as being one of the associations with which you are connected; are you connected with it? A No, the company is out of existence.

Q Were you connected with it while it was in existence? A Yes.

Q In what capacity? A I was secretary and treasurer, I think; I was treasurer, I know, and secretary, I think.

Q You are not sure about the matter? A No, I am not.

Q Did you have any stock in it? A I think I had one share.

Q And who enlisted your interest in the concern?

*Mr. Ward.* Objected to as immaterial and incompetent and not evidential against the Pacific Navigation Company.

*Mr. Faulks.* I object to it as immaterial and incompetent.

*Mr. Faulks.* May it be understood that our objection stands to this line of testimony?

*Mr. McCarter.* Yes.

A I was out of the office one morning about four years ago, until about one o'clock, I think, and when I arrived at the office, Mr. Davis told me that Mr. Chase—Mr. Warren D. Chase had been in the office and had asked him to organize a company, and he wanted some officers and incorporators; they organized, putting me in as an officer, without my knowledge, and the incorporators were the other people in Mr. Davis' office—I think the stenographer Annis Mann, Mr. Bradley, who was then the treasurer of the Butterworth-Judson Company—he took that position when I resigned—and the other one was a representative of the Corporation Trust Company of New Jersey, I don't know what his name was.

Q You are speaking now of the incorporators? A Yes. I think they were the directors also.

Q What was Mr. Davis's first name? A Everly.

Q Had you known him? A Oh, yes, I have been employed by him.

Q What was the business of Everly M. Davis? A He is a lawyer, and he is also the owner of the Butterworth-Judson Company, or an owner of the majority of the stock.

Q Is that the concern whose factory is over in Jersey? A Newark.

Q Where is Mr. Davis's office? A 60 Wall street.

Q How long had you known Mr. Chase? A I have known Mr. Chase for about, I should say nine years, perhaps.

Q What is his business? A He is a lawyer.

Q Is he associated with Mr. Davis? A No, he is a friend of Mr. Davis's.

Q Had you ever had any business relations with Mr. Chase previous to this occasion? A No, not that I recall.

Q Had you ever had any business relations with Mr. Davis outside of your connection with the Butterworth-Judson Company? A Yes, I was a clerk in his office previous to that.

Q You never had been admitted to the bar, yet you were a clerk in a lawyer's office? A Yes.

Q What kind of a clerkship did you fill? A A law clerk previous to that, years ago.

Q You say that you became the first treasurer and possibly the first secretary of this concern? A Oh, no, that was an old concern.

Q I am speaking now of the Securities company—and that the other two officers or directors were the stenographer in the office— A In Mr. Davis's office.

Q What was his or her name? A Annis Mann.

Q Was that a woman or man? A That is a woman.

Q Where does she live? A I don't know.

Q Is she still in Mr. Davis's office? A No, she left the employ of Mr. Davis about four years ago, I think—more than that, five years ago—about four years ago.

Q When did you see her last? A I saw her about—I passed her on the street about a month ago, I didn't speak to her.

Q Where is she working now? A I don't know.

Q You don't know where she lives? A No.

Q The other director was someone over in the Corporation Trust Company? A Yes.

Q Do you know Mr. H. C. Coughlan? A I never heard of that name.

Q Do you know a man named L. H. Gunther? A No.

Q Or a person named John R. Turner? A That seems familiar.

Q That sounds natural? A Yes; I think perhaps that is the fellow in the Corporation Trust Company.

Q And Mr. Coughlan and Mr. Gunther you didn't know anything about? A No.

Q Do I understand that this concern had already been incorporated before your interest was— A It had been incorporated that day, I believe.

Q You were told by Mr. Davis that he would like to have you act as secretary and treasurer? A Yes.

Q You were then a clerk in Mr. Davis's office? A Yes, and I spent most of my time then in Newark, in the office of the Butterworth-Judson Company.

Q You still were accustomed to go to Mr. Davis's New York office? A Yes.

Q And he told you that he had incorporated this company at Mr. Chase's request? A Yes.

Q And he would like you to act as treasurer and possibly secretary? A I think I was both secretary and treasurer.

Q Did he tell you what the company was incorporated for? A No, he didn't; he just said it was a matter that Mr. Chase was putting through and that was enough for me.

Q Did you give any bond as treasurer? A No.

Q Every have any stock in your possession? A No.

Q Were you a director? A I don't believe I was.

Q How long did you act as treasurer? A All the time of the existence of the company.

Q How long was that? A I know I filed some tax reports for them after this transaction; that was all that ever was done, and then after that, I believe the next reports that came in the following year, they said not to bother with them, the company was of no further use.

Q You were the only treasurer the company ever had? A Yes.

Q You don't remember whether you were secretary or not? A I don't remember.

Q If you were not secretary, who was? A I cannot tell; I think it is quite likely I was secretary, too.

Q Did you ever keep any minutes? A I did at this transaction; only once, I think.

Q Did you own any stock yourself in the company? A No.

Q Did you know Mr. Chase before this? A Yes.

Q Did you know Mr. Robbins? A No.

Q Never met him? A I didn't, no.

Q Did you know him at the time? A No.

Q Never met him, never heard of him? A No, I never heard of him.

Q Mr. Nicholson, did you know him? A No, I didn't know any Mr. Nicholson.

Q Had you ever met him before then? A I never heard of him.

Q Mr. Canfield? A No, I never heard of him.

Q Did you know Mr. Gonterman? A No.

Q Did you know Mr. Birdsey Case? A No.

Q Mr. Schaefer? A No.

Q Mr. Sheaf? A No.

Q This Mr. Chase, his first name is what? A Warren D.

Q And he lived in Hartford? A Yes.

Q How long had you known him? A I had known him off and on ever since I knew Mr. Davis; going to Mr. Davis's office, I met him a great number of times.

Q He was a lawyer as well as Mr. Chase? A Yes.

Q Mr. Davis and he were rather closely associated? A Yes, they were friends, they were classmates.

Q They worked together and harmonized in different matters? A They had some business.

Q And Mr. Chase was accustomed to going into Mr. Davis's office? A Yes, when he came in town he would be in there.

Q Two or three times in the course of your evidence, Mr. MacIntosh, you have spoken of the transaction; I would be glad if you will explain what you meant by the transaction, and then tell us what the transaction was. A I referred to that because Mr. Brown asked me about the transaction; I presume that is what you mean.

*Mr. Ward.* I renew my objection to the question as not bearing on the issue between

the complainant and the Pacific Navigation Company.

*Mr. Faulks.* I understand my previous objection goes to all this line of testimony.

*Witness.* The company was organized to put through some business deal, and that is the one that I referred to, because it immediately died afterwards.

Q How did you have that information? A Through Mr. Davis and Mr. Chase.

Q They both told you? A Mr. Davis did, and Mr. Chase assumed I knew it, I presume; I don't remember of his telling me.

Q Go on and describe what the one business deal was that this company seemed to have been born to meet and then died afterward.

*Mr. Faulks.* I object to the witness's statement that Mr. Chase knew something or other, and move that whatever he said on that subject be stricken out.

A A few days after the organization I received a telephone message from Mr. Chase, asking me to meet him in the Bank of Manhattan Company.

Q In this city? A In this city, on Wall street. I think that was on Friday, because the next—I went over to the bank and waited there from about eleven o'clock until two, and no one showed up, and I left—no, a boy came around from the office and told me that they were not coming, and the following day being Saturday, I was asked to come again.

Q What day of the month was this? A I don't know that. I recall that because I stayed after hours in the bank a little while; I went to the bank and waited for Mr. Chase; he came

there and introduced me to Mr. Richards, the treasurer of the Metropolitan Steamship Company.

Q Were Mr. Chase and Mr. Richards alone or were other gentlemen with them? A I was also introduced to an officer of the Bank of Manhattan Company, whose name I don't recall, though I have met him since on the street; I would know him if I saw him; I don't know his name.

Q Was there anybody with Mr. Richards and Mr. Chase, any other gentlemen beside the officials of the bank? A Not that I know of; there were a number of people around there in that bank.

Q Did you meet Mr. Robbins that morning? A I didn't know the gentleman at all.

Q Was Mr. Chase conversing with anybody other than Mr. Richards? A The bank people, that is all that I recall; I know he talked with them.

Q In what part of the bank was this conversation? A I stood just inside of the rail of the Bank of Manhattan Company on the Wall street end of the room.

Q Just go on and tell us what transpired. A Mr. Chase handed me some checks which he had drawn and asked me to sign them as treasurer of the New England Securities Company, I think is the name.

Q How many checks were there? A There were two.

Q Did you happen to notice their amounts? A I know they aggregated $3,000,000, but I don't know how it was divided.

Q How did that effect you, drawing checks for $3,000,000? A That didn't affect me at all.

Q You signed them like a man? A I certainly did.

Q You didn't know whether you had that much in the treasury or not, I suppose? A No, I had confidence in the men whom I was dealing with.

Q You personally hadn't made a deposit of $3,000,000 in the bank upon which these checks were drawn? A No. I saw the pass book, though.

Q Who had the pass book? A Mr. Chase.

Q And on what bank were those two checks for $3,000,000 drawn? A Drawn on the Bank of Manhattan Company.

Q And they were for $1,500,000 each? A Approximately.

*Mr. Faulks.* He hasn't said approximately; he said, "I don't know the amount."

Q As far as your recollection goes, they were practically even in amount, that is, half and half?

*Mr. Faulks.* I object to that as leading and not based upon any evidence heretofore offered.

*Mr. Ward.* Same objection.

Q What is your recollection about the checks? A My recollection is that they were somewhere around a division of half and half; I don't know whether they were or not.

Q I find by reference to the record, that on page 782, the individual ledger No. 86 of the Bank of Manhattan Company on page 1474 shows an entry as of March 5, of one check $1,450,000, and another check $1,550,000; are they the two checks referred to?

*Mr. Faulks.* I object to that on the ground that the ledger referred to in the question has not, nor have its entries or any of them, been properly proved, and on the ground that until it has been done and these entries have been admitted in evidence, this question cannot properly be pressed.

*Mr. Ward.* Same objection, and also object on the ground that the question is leading.

A I presume they are. I don't know, but I think that is about the amounts of the checks.

Q Continue to describe the transaction, please; you say you signed those two checks, whatever they were? A I did.

Q What happened? A Mr. Chase took them. Mr. Richards endorsed them, I believe.

Q Do you recall to whose order those checks were drawn? A They were drawn to the Metropolitan Steamship Company of Maine.

Q And after you had signed them, Mr. Richards endorsed them? A Yes.

Q Do you remember the character or form of his endorsement ? A Treasurer, I think.

Q And after they had been so endorsed, they were handed back to Mr. Chase? A I don't know, I didn't see them after that.

Q What did you understand as treasurer of the company was to be done with those checks?

*Mr. Faulks.* I object to that on the ground that it immaterial, irrelevant and incompetent; his understanding in regard to the matter is not any evidence in this case.

*Mr. Ward.* Same objection.

A I didn't know what was going to be done with them and I didn't care.

Q Who other than Mr. Chase on behalf of the New England Securities Company directed you to sign these checks, anybody? A No.

Q Had there been, to your knowledge, any meeting of the Board of Directors to sanction that step by you? A I never attended any.

Q Were you at that time, or previous to the time that you signed those checks, shown any minutes purporting to be minutes of any meeting of the board directing that step to be taken by you ? A No.

Q Did you express any curiosity to ascertain where this company, of which you were the treasurer, had obtained $3,000,000? A No.

Q You simply did what Mr. Chase told you? A I did what he told me to—what Mr. Davis told me to, also.

Q Had Mr. Davis outlined this program to you before you went there? A No, he said that Mr. Chase wanted him to use me as a dummy officer of the corporation.

Q And whatever Mr. Davis wanted you to do, you were willing to do? A I was perfectly satisfied to do what either of them asked me to do, assuming that it would be all right.

Q After you had signed these checks and they were endorsed by Mr. Richards, what did you do? A I went back to the office, I think.

Q Did you sign any stock certificates as treasurer of the company? A I think I did, yes.

Q When? A Previous to that, I think.

Q How long? A The same day of the—

Q Check transaction? A Yes.

Q Three certificates? A I don't know how many.

Q Do you remember in whose name they were issued? A I do not.

Q Who directed you to sign them? A Mr. Chase; he had them.

Q He had them? A I know they were stamped certificates; I remember them because they got them up in one day; they were blank forms of certificates.

Q They were not lithograph, they were sort of— A They were loose sheets, they were not bound up, and they were stamped with the name of the company, and apparently made from a rubber stamp.

Q Blank certificates with the name of the company filled in where the name would naturally be, with a rubber stamp? A Yes.

Q Who prepared them? A I don't know.

Q They were presented to you for signature as treasurer? A Yes.

Q Who signed them as president? A Annis Mann, the stenographer.

Q Had she signed them before you did, or at the same time? A I don't know.

Q Do you remember in whose names those certificates were issued? A No.

Q Do you remember the amounts of stock that they represented? A No, I don't know, other than the officers had a share each.

Q What did the company receive for that stock, so far as your knowledge as treasurer went? A I don't know.

Q You don't know anything about that? A No, I didn't have much knowledge as treasurer.

Q Was one of these certificates for $1,499,800 and odd?

*Mr. Faulks.* I object to that as leading.

*Mr. Ward.* I object to that, especially after the witness has testified that he did not know the amounts.

A I don't recall any amount.

Q Are you able to recall whether or not one of those certificates was for a very large amount and the others were for a nominal amount?

*Mr. Faulks.* Same objection.

A I absolutely do not recall any large amounts of those certificates.

Q Did you understand that when those certificates were issued that you signed as treasurer, they represented paid-up stock? A No, I just signed them and I didn't understand anything about them, because I didn't ask any questions.

Q Do you recall having signed as secretary and filed in the office of the Secretary of the State of New Jersey, on the fifth of March, 1910, an annual report? A Yes.

Q In which you stated that the amount of the authorized capital stock of this company is $1,500,000, and the amount actually issued and outstanding is the same? A No, I don't remember that; I don't remember what was in that report.

Q Who prepared that report? A I think it was mailed to me by Mr. Chase.

Q Mailed to you from Hartford? A Hartford.

Q Do you recall signing and filing a report of the character that I have just described upon the same day that this check transaction took place? A No. I thought I only filed one report; that was my recollection.

Q What year was this transaction at the

Bank of the Manhattan Company that you referred to? A I think it is 1910.

Q I show you a certified copy of the annual report of the New England Securities, purporting to be signed by Annis Mann as president and George A. MacIntosh as secretary, and also dated the fourth of March, 1910, and endorsed "Filed March 5, 1910." Please look at that copy and refresh your recollection therefrom and tell us whether it is not a fact that that document was signed by you the day before the check transaction to which you referred in your evidence.

*Mr. Faulks.* I submit that question is objectionable upon the ground that it is leading, particularly as the witness has already said that he does not know the date of the month on which the so-called check transaction took place. He can only identify it by a day in the week, because he was at the bank after banking hours.

A I presume I signed it; I don't recall signing it.

Q You received it at the office by mail from Mr. Chase? A Not that one.

Q The original? A No, I think the one I filed was a year later than that, that I remember filing.

Q This now brings back dimly to your recollection the fact that there was a previous one? A I didn't know anything about this one; I had forgotten about this one.

Q Do you now recall anything about it? A I signed so many papers at that time that I don't know what they were. I don't think the report I filed a year later was like that; I think we had some report on the corporation.

New Jersey State Library

Q I now show you what purports to be a certified copy of a report dated the first of April, 1911; look at that and see if that seems to be a copy of the one that you have in mind. A (Examining former report shown him.) I know it was a year after the incorporation that I filed a report.

*Mr. McCarter.* I offer in evidence these two certified copies of these two annual reports, so they can be marked, and this confusion that arises from the witness's designation of them will thereby be avoided.

(Report filed 1910 marked Exhibit C. 108.)

(Report filed 1911 marked Exhibit C. 109.)

*Mr. Faulks.* I make the same objection to the receipt in evidence of these papers as I did to the other evidence.

*Mr. Ward.* I object that the reports are not proved by the witness, nor are their contents proved by the certification of the Secretary of State, and are not relevant against the Pacific Navigation Company.

Q I show the witness Exhibit C. 108, which is the report filed March 5, 1910, and ask him if he now recalls the fact that a report of this character was filed, naming John R. Turner, Stanley Bradley and Annis Mann as the directors, whose term of office would expire on the first Thursday of March, 1911, and that Annis Mann was also named therein as president, and himself named as secretary and treasurer, and that the capital stock issued and outstanding was also therein named as $1,500,000; do you now recall it?

*Mr. Faulks.* I object on the ground that the witness has already been shown this

report before it was offered in evidence, and said he had no recollection with regard to it whatever.

A I have no recollection of signing that.

Q I now show you Exhibit C. 109, and ask you who gave you the information which enabled you to sign and procure the filing of that document? I understand you recall that? A I recall this.

Q That is filed April 4, 1911? A Yes.

Q Who gave you the information that B. L. Leibson had been made president? A I made her president.

Q What is another "her"? A That is a "her."

Q Was she a stenographer also? A She took the place of Miss Mann when she left; Miss Mann had left the employ in that year; she took the position and was made president.

Q What do you mean you made her president? A I suggested her name when they asked that report to be filed, and I said "We haven't any president, and we will have to make a new president," so they suggested "Who will it be"? I said, "It will be B. R. Leibson."

Q Whom are all these suggestions to and from? A From Mr. Chase of Hartford, Connecticut.

Q When did Miss Mann leave; how long before the first of April, 1911—this April Fool's day when this thing was gotten up—half a year? A I don't recall.

Q There had been no occasion for a president until the filing of this report came up and you had to have a president, and you suggested Miss Leibson; that is all there was about it? A That is about it.

Q Was there a meeting of the board of directors to elect a president? A Yes, there must have been.

Q Who met? A The directors; that is all I know.

Q Do you know who they were? A I do; Stanley Bradley was a director—I don't know whether they were changed—Turner and Bradley.

Q Did Miss Mann ever have a share of stock? A Oh, yes.

Q Did she leave that when she left the office? A She had it and she didn't have it; she never had it in her possession, I don't think.

Q Who did have it? A I don't know; I never had mine; I presume hers is the same.

Q The same thing, I presume, is true of Miss Leibson? A Yes.

*Mr. Faulks.* You presume it?

*Witness.* Yes; I don't know.

Q Is Miss Leibson still in the employ of the office? A No.

Q She has been fortunate enough to get married? A Yes.

Q What is her present married name? A Albert.

Q Do you know where she lives? A No.

Q Any idea? A No; I can tell you where you can find out.

Q I will be glad if you will do it? A Ask Mr. Brown, he knows.

Q Mr. Brown has her address? A Yes.

Q I will be glad to have it on the record. A I don't know it.

Q Will you swear that a meeting of the board of directors was held previous to the

election of Miss Leibson as president and attended by the then directors of the company? A Yes; I remember having this meeting for that purpose.

Q Were there minutes kept; you were secretary? A Yes. I think I drew up these minutes myself.

Q What became of them? A Sent them to Mr. Chase.

Q Now, did anybody introduce you or vouch for you at this bank where you were having this somewhat important transaction involving $3,000,000? A I was introduced by Mr. Chase.

Q Did you sign a signature card? A Yes.

Q Did you read that signature card? A No; I knew it was a signature card. I believe there was printing on it that I didn't read; it was the usual signature card, I imagine.

Q I want to try to refresh your recollection a little, if I may. This signature card that you signed that day bears some other endorsements, and I want to know if you now recollect the fact that you were introduced that day by Mr. Billard or Mr. Robbins or Mr. Hemming?

*Mr. Faulks.* I object to that upon two grounds: one, that the signature card has not been proved in the case and is not now shown the witness, and upon the further ground that the statement that the signature card bears endorsements as stated by Mr. McCarter, is not the fact.

A I don't recall anybody vouching for me down there but Mr. Chase; there wasn't any signatures on the card when I saw it.

Q I will be glad if you will just describe again where you were at the time you signed the check? A I was right inside the rail di-

viding the officers' desks from the main office of the Bank of Manhattan.

Q You didn't go to the deposit window, did you? A No.

Q And you didn't come in contact with the person with whom the signature card was left? A No, it was handed to me by an officer of the bank and I signed it.

Q Did you leave Mr. Richards in the bank? A Yes.

Q After you signed the check you left? A Yes.

Q And anything that was done with the check was done by him and not by you? A Yes.

Q When did you next see those checks? A I saw them after I got them back from the bank; I went down and got them.

Q You went down to the bank and got them? A Yes.

Q When? A Perhaps a month after that.

Q At whose direction? A Nobody's; I went and got them, because I wanted to get them, that was all.

Q Had you any other assets of the concern in your possession? A No.

Q So that between the time you drew those checks and the period about a month afterwards, when of your own will you went to the bank to get them, your assets as treasurer of the company were nil?

*Mr. Faulks.* I object to that on the ground that it is leading.

A I want to correct my testimony there: it must have been nearly a year afterwards that I went to get them.

Q You had nothing in your possession, so far as you now recollect, in the intervening twelve months?

*Mr. Faulks.* Same objection.

A Not that I recollect; no.

Q You went to what bank to get them? A Bank of Manhattan Company.

Q Whom did you see? A I went to the bookkeeper and asked for them.

Q Had you been to the bank in the meantime on company business; that is, Securities company's business? A Yes, I was there once.

Q For what purpose? A To deposit a check.

Q Another check? A Yes.

Q Do you recall what check that was? A It was a check; I don't know whose check it was, but I think it was some bank's check; I remember it was a cashier's check of some bank.

Q What was the amount of it? A Around $5,000.

Q Had you deposited that down there? A Yes.

Q Who gave you that check? A I don't recall the man's name.

Q Did you deposit as soon as you received it? A Yes.

Q At whose direction? A At Mr. Davis's, I think.

Q Do you know what that check was for? A I understood at that time it was—

*Mr. Faulks.* The question is whether you know.

Q You were treasurer of the company; you had some information in regard to what this check was? A I was told.

*Mr. Faulks.* I object to any statement as to what the witness was told, on the ground that it would be hearsay and incompetent.

Q What information had you with regard to this $5,000 check?

*Mr. Ward.* Same objection.

A I was told that it was the balance of the purchase price of the stock of either the company that I was treasurer of, or the Metropolitan Steamship Company of Maine stock; I don't know. Some stock, I will have to say.

Q Was it a check to cover expenses in connection with the organization of the company?

*Mr. Faulks.* I object to that as leading and calling for a conclusion by the witness.

A No.

Q About when was this check deposited by you? A About a year after, I imagine.

Q A year after this Saturday. A Yes, about a year after; it might have been a little more or a little less.

Q A short time before you filed this second report which has been offered in evidence? A I don't recall whether it was before or after.

Q Previous to the receipt of this check for $5,000 which you think you received and deposited about a year after the company was organized, had you any other cash in the treasury than the sum of upwards of $3,000,000, to which you have referred? A I don't know that I did.

Q So far as your recollection now goes as treasurer, no money was in the treasury other than that, until you got the $5,000? A That is my impression.

Q Did the company have to pay a state tax to the State of New Jersey? A I don't believe they ever paid any. I don't know whether there was any assessed against them or not.

Q You have no recollection of paying any state tax? A I don't know; they didn't pay any—not by check through me.

Q Were you given any compensation for your services? A Yes.

Q Who paid you? A I paid myself.

Q Out of what funds? A Out of the $5,000.

Q So that until this $5,000 came in, there was no money with which to pay you your compensation as treasurer and secretary? A No.

Q And what other persons connected with this corporation were paid salaries or other money out of this $5,000 than yourself? A Nobody.

Q Did you receive the full $5,000? A No, I did not; certainly. I received either $250 or $300.

Q And was the balance of it left on deposit or was it exhausted? A I drew a check for the balance.

Q To the order of Beverly M. Davis? A Yes.

Q At the same time? A At the same time.

Q And that was Mr. Davis's compensation for his connection with the company? A I don't know what he did with it.

Q As treasurer of this company, for what purpose did you draw a check to Mr. Davis? A I drew it more as a dummy than as treasurer.

Q Who told you to draw it? A I think Mr. Davis told me.

Q And who gave you the check? A The $5,000 check—I don't know the gentleman's name.

Q Where did the money come from? A It was given to me by a man up town in New York, in an office up town; I took some papers up town and I don't recall the office even I went to, but I went in and gave some papers to him and he gave me this check.

Q At whose direction did you take some papers up town and receive a check for them? A Mr. Davis's who, I believe, got his instructions from Mr. Chase.

*Mr. Faulks.* I move to strike out the statement of the witness as to what he believes as to where Mr. Davis got his instructions.

Q Mr. MacIntosh, can you tell us when this trip up town was made, about? A No, I cannot.

Q Was it about the time you deposited the check? A Yes, it was; I think the same day.

Q Can't you tell us where you went? A No, I cannot; I know I took the subway, and I either got out at 28th street or 23rd street, I forget which. There is an instance that recalls it to my mind quite strongly, and that is why I remember I was on the local subway. If you want me to tell about that, I will, but it hasn't anything to do with it.

Q The check, Mr. MacIntosh, was in return for the papers, wasn't it; you delivered the papers and received the check?

*Mr. Faulks.* I object to that as leading.

A Yes.

Q What were the papers? A I don't know what the papers were; they were given to me and I didn't look at them; they were in an open envelope.

Q Whose check was it? A I don't know; it was a cashier's check, because I immediately drew against it.

Q You have no idea at which station you got off? A No; I say it was either 23rd or 28th street.

Q You are quite clear that it wasn't the Grand Central? A I know it wasn't; I was on a local subway I took at 14th street.

Q Who gave you directions where to go? A Mr. Davis.

Q Had you ever been there before? A No, never been there before or since.

Q Was it upstairs or downstairs? A It was upstairs; it was quite a large building.

Q East or west of the subway? A I think it was west; I am not sure. I don't recall the number of it at all.

Q Whom did you inquire for? A I don't know the name; I was told to inquire for a man in the office. I was given a room number and I went in and I know he was sitting at a roll-top desk inside of the door, and there was a stenographer in the room; it seemed to be a small office.

Q Can you describe the gentleman's appearance? A No, I didn't look at him, I don't believe; I just went in and handed him the papers. I asked for him and handed him the papers, and he gave me the check and I left.

Q Was this a business office or law office? A It wasn't a law office, I am quite sure; I don't know what kind of an office it was.

Q And you cannot remember the name of the gentleman? A No.

Q Have you a picture at all in your mind of this gentleman behind this desk who gave

you this mysterious check? A No, I haven't the slightest.

Q Did he have red hair? A I cannot tell you.

Q Brown hair? A I don't know; I don't recall him at all.

Q Have no picture in your mind of him? A It is absolutely a blank as to him.

Q Were you accustomed just to run errands for Mr. Davis or Mr. Chase? A No.

Q That was not the usual thing for you to do? A No, it was not.

Q You went as treasurer, didn't you? A I went—

Q As treasurer? A I went because I was treasurer, bnt not as treasurer; I wouldn't describe it as that. I went as an accommodation to Mr. Davis, perhaps, and Mr. Chase. I went because I happened to be treasurer.

Q Did they tell you not to give up those papers unless you got the check? A No, they just told me to give them to him and he would give me the check.

Q Did he apparently expect you? A He expected me apparently, because the check was ready when I got there.

Q To whose order was the check? A To the New England Securities Company, I believe.

Q By whom was it signed? A I think it was a bank check.

Q On what bank? A I don't recall.

Q For a round $5,000? A Around that amount.

Q Were you made aware before you went up there that your compensation for the large number of duties you performed as treasurer of the company was to come out of this check? A No.

Q Had Mr. Davis told you that? A I don't know whether he told me before I went or after I came back; I knew I was going to get something out of it, because I insisted on that.

Q When had you been told that, a year before? A No, that same day. I had some discussion about what we were going to get.

Q This discussion was between Mr. Davis and yourself? A Yes.

Q Mr. Davis told you that there was $5,000 up town for expenses in the matter and you wanted to know what your share was, was that it?

*Mr. Faulks.* Objected to as not being a true statement of the evidence.

A No.

Q How did it come up; what was stated? A I understood we were closing up the business of the company at that time, and I said, "Well, this is when we get our money, if we get anything; what are we going to get out of it?" We discussed it and agreed to either $250 or $300 that was mine; I don't recall which it was.

Q Who agreed that, you and Davis? A Yes.

Q Do you think you could go to that office today up town? A I could not, if I was given a million.

Q Did you keep any books as treasurer? A No.

Q No books at all? A Not a book.

Q Did you keep any papers evidencing the time when you received this $5,000 and paid it out? A No, I didn't keep any papers; I just turned the check over to Mr. Davis, the balance of it.

Q Did Mr. Davis take a voucher from you for your $300 or $250? A No.

Q Did you receive that by check drawn by you out of the $5,000? A Yes.

Q And then you drew a check for the balance to Mr. Davis's order? A Yes.

Q And it was after that transaction, as I understand you, that you went to the Bank of Manhattan Company and took out the vouchers? A After that—I took the pass book—up to the time of the deposit I did not have the pass book; it was given to me by Mr. Davis.

Q At the time of the deposit of $5,000? A Yes; and then I had the deposit marked in the pass book when I took the $5,000 check there, and I kept the pass book in my possession, and one day I went over—no, I didn't do that, I left the pass book there the same day I closed it up. They said they wanted it to close the account, and then one day I was walking up Wall street, I said, "Well, I guess I will go in and get the pass book," and I did so, and they gave it to me.

Q What day was it you closed the account? A The same day I got the $5,000, or whatever amount it was.

Q Was it a round $5,000? A Yes.

Q Was it exactly $5,000? A No, I don't think it was. I think it was a little less.

Q Did you present the two checks to the bank, one for yourself and one for Mr. Davis to close out the account? A No, I drew those checks and I think I deposited mine in my own account, and Mr. Davis took his.

Q And that completed the closing out of the account? A No, I told them we were going to close the account.

Q Had there been any money in the bank for a year? A Not that I know of.

Q Who directed you to tell the Bank of Manhattan Company that you were going to close the account? A I don't recall; I think Mr. Davis, it must have been.

Q What did you do with the return checks and the bank book after you finally got them? A I shipped them to Mr. Chase.

Q By mail? A No, by express; I think I sent a lot of papers, all the papers up to him; I think they were in it.

Q What did you send to Mr. Chase; describe it? A The seal, and they had a loose leaf book, minute book, and when there were any minutes to be written up, they were written on these loose leaves taken out of this book, and then I gave them to Mr. Chase; this minute book with the blank sheets was there in the office and I put that with the seal in a package and expressed it to him.

Q What else; you have the minute book and the seal; what else did you send to Mr. Chase? A All papers I had; I don't know just what they were.

Q What were there in the way of checks? A Pass book and checks.

Q What checks? A The four checks I have named here, the canceled vouchers.

Q Your little one for $250 or $300, and Mr. Davis's larger one? A Yes.

Q And the two big ones that had been deposited on the first occasion? A Yes.

Q Did that constitute the sum total of your relations?

*Mr. Faulks.* They wouldn't have checks that were deposited.

*Witness.* We did have them; the checks that I drew were the checks of our com-

pany; I drew on the deposit I made and they were returned.

Q Have you now described your whole connection with this company? A Yes, I think I have.

Q This cashier's check for $5,000 or thereabouts, was that drawn to the order of the New England Securities Company? A Yes, I deposited it to their account and just endorsed it.

Q You are sure it was drawn to their order? A Yes; I deposited it to the account of the New England Securities Company.

Q Had you been in the Bank of Manhattan Company between the time when the $3,000,000 transaction took place and the time when the $5,000 check was deposited? A No.

Q Did they remember you? A They kept me waiting there a few minutes to apparently look up the signature; I don't think they remembered me; I just went to the teller's window.

Q How did you endorse this check, do you remember? A I endorsed the name of the company, as I remember.

Q New England Securities Company, by yourself as treasurer? A Yes.

Q And it was that signature that they looked up, as you understood it? A Yes. I know why they looked it up. I certified my check and the check, I think, to Mr. Davis the same day; when I went to deposit it, I drew those checks to myself and to Mr. Davis, and immediately certified them.

Q That is, you had them certified? A Had them certified.

Q You had already deposited the $5,000 check? A Yes.

Q Then you went back to the office and drew the other two checks? A No, I think I drew them right there in the bank. I didn't have any blank checks; I asked them for some blank checks, and I drew two checks, one to my own order and one to the order of Mr. Davis and had them certified; then they looked up my signature and certified the checks.

Q Had you seen Mr. Davis between the time you received the check and the time you deposited it? A Yes, I went back to the office.

Q And did you agree upon the figures or had you already agreed upon it?

*Mr. Faulks.* Let him say what was said or done.

A I don't know whether we agreed upon it before I went up town or when I came back; I think we talked about it after I came back.

Q Do you recall upon what bank that cashier's check was drawn? A No, I do not.

Q You can't recall that either? A No, I do not.

Q How long before this $5,000 transaction, to the best of your memory, was it, that you had seen Mr. Chase? A He came in the office perhaps an average of once a month, or every time he was down to the city he would come in and go out to lunch with Mr. Davis and myself sometimes.

Q Have you seen him since that transaction? A Oh, yes, I have seen him at the same intervals ever since.

Q These relations with Mr. Davis continued about the same since then as before? A Yes.

Q Do you know who prepared the charter of the New England Securities Company? A No, that was done when I came in the office.

Q What was the last time you saw Mr. Chase? A I saw him last Thursday, I think.

Q And do you remember when you were subpoenaed? A I was subpoenaed Tuesday, if I recall.

Q Did you tell Mr. Davis of your being subpoenaed? A Yes.

Q How long was it previous to the time that you were subpoenaed that you had last seen Mr. Chase? A About three weeks.

Q You told Mr. Chase, of course, that you were subpoenaed? A He—

Q He knew it? A He asked me, I believe; he called me on the phone.

Q From Hartford? A No, he was in the city.

Q He spoke to you on the phone about it? A He just called up and asked me if I had been subpoenaed and I said "Yes."

Q And then you saw him? A Yes, he was down to luncheon.

Q Did you discuss the question of your testifying while you were at lunch? A Yes.

Q Did he assist you in endeavoring to recall the place where you went that day? A No, I asked him; I said—

Q He couldn't help you? A I said, "Who was it I went to see?"

Q And he couldn't remember either? A He said, "you testify to all you remember, and if they want anything from me they can call me;" that is all I could get out of him. He didn't tell me anything he knew.

Q You knew when you were at luncheon with him, Mr. Chase knew where you went, didn't you? A I don't know whether he did or not; he didn't say whether he knew.

Q Was the place you went referred to in your conversation? A I asked him; I said, "Who was it, and what was it that I took up town that day to close that deal where I got the $5,000, that last check," and he laughed at me and said, "You tell what you remember."

Q May I ask your age? A Thirty-three last February.

Q Have you always lived in New York? A No, I lived here for the last fifteen years, I should say.

Q And been associated with these enterprises all that time? A Yes, I have been associated with Mr. Davis for about ten years, I should say.

Q And previous to that, you had been in New York, and what had you done? A I worked in various law offices; I clerked around at different places.

Q So you must have commenced in New York in one capacity or another, at about eighteen? A I was younger than that, I think.

Q Where did you come from when you came to New York? A I came from Massachusetts first; I was born in Canada.

Q Where? A Nova Scotia.

Q And how long a time did you remain in Nova Scotia before you came to the States? A I left there when I was about fifteen or sixteen.

Q And you were a little while in what place in Massachusetts? A In Boston.

Q In business there? A I lived there; I worked there for a little while, some little clerking job, and then I came on to New York; my brother was with me.

Q Does your family still live in Canada? A No.

Q You have no relatives there? A I have a sister there; she is in Nova Scotia temporarily; she goes down there in the summer time.

Q From where? A From New York.

Q Are you related to Preble MacIntosh? A I haven't any relatives that I know of other than my brother and sisters on this side of the ocean; the rest of my relatives are in Scotland. Wait a moment, I have one branch of the family that live in Massachusetts that I have never known, and I don't know how many there are of them. They are distant relatives, though.

Q Did you ever have any transactions with the Billard Company? A No.

Q None whatever? A No, I don't recall any at all.

Q Do you know the brokers William B. Tyler and Arthur G. Gwynn? A No.

Q Never heard of them? A No.

Q Had no business with them? A No.

Q My impression is that you testified that the transactions that we have adverted to here are all the transactions that occurred, so far as you now recall, between you as treasurer of this Securities company and the company during its life? A Yes, that is all I recall; I may have had some little minor things to do with the incorporation, like filing reports or something of that kind. I don't recall; I don't just know what reports are filed in New Jersey, and I attended to all those things, without giving it any particular attention, and signed as a matter of course anything that came up.

Q What did you understand you were giving these two checks for? A For Mr. Chase, that is all; I don't know—I understood—yes, I understood it was a steamship purchase, not from

what anybody told me, but what I gathered, perhaps; I didn't inquire about it and I wasn't interested.

Q Did you know Richards before that day? A Never met him.

Q Ever seen him since? A Never.

Q Have any talk with him about the transaction? A No, I talked about other things with him a little while.

Q Just casual things? A Yes, we were discussing in the bank—one instance that I remember, we were looking over the old pipes of the Manhattan company, the water pipes they have up on the wall, preserved old wooden pipes of the Manhattan company.

Q Did you discuss the New Haven road at all? A No.

*Mr. Faulks.* No questions.

*Mr. Ward.* No questions.

BEVERLY M. DAVIS, sworn for complainant.

*Direct examination* by Mr. English.

Q You are a member of the New York Bar, I think? A Yes.

Q Where do you live? A 296 Sterling Place, Brooklyn.

Q You are not a resident of New Jersey? A No.

Q Do you know a company called New England Securities Company? A Yes.

Q It was incorporated in your office, I think, was it not? A I don't know whether it was incorporated there or not, but one or more of its earlier meetings were held there.

Q Do you know a Mr. George A. MacIntosh? A Yes.

Q Who is he? A He is a clerk of mine.

Q When was this company organized, do you remember? A No, I don't remember.

Q I show you a marked copy of the charter of this company, from which it appears that it was incorporated on March 3, 1910; does that date coincide with your recollection of it? A I should say that it does. If it fails to coincide, it is merely a difference of a day or two, and in that day or two a meeting may have taken place before I became acquainted with the matter.

Q But your recollection is, it was early in March? A About that time, yes, sir.

*Mr. English.* This seems to be an unofficial copy, which is undoubtedly correct, showing it was incorporated on March 3, 1910. I offer in evidence the certificate of incorporation. Is there any objection to the formal proof? It is marked copy from the Secretary of State's office.

*Mr. Faulks.* I make no objection on the ground that it is not certified, but object to it on the ground that it is immaterial and irrelevant.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 126.)

Q There is in evidence here as Exhibit C. 108 a copy of the annual report of this company, filed March 5, 1910, and also as Exhibit C. 109, a copy of the next annual report, filed April 4, 1911; in each of these George A. MacIntosh is stated as secretary and treasurer. He is the man you referred to as a clerk in your office? A Yes.

Q Are you the lawyer who drew this certificate of incorporation? A No, sir.

Q Were you present at the incorporation meeting? A I don't think so.

Q How much of the matter was done in your office? A I am unable to tell you.

Q Were you the person who actively caused the incorporation to be made? A No.

Q So far as you know, who was?

*Mr. Ward.* Objected to as immaterial and irrelevant.

*Mr. Faulks.* Same objection.

A I should say Mr. Chase.

Q Do you know his name? A Warren D. Chase of Hartford, Connecticut.

Q He is a lawyer? A Yes, sir.

Q Did he see you about this matter, or you see him; did you get together on it? A What do you mean?

Q Before this company was incorporated, did you have either correspondence or conferences with Mr. Chase relative to the matter? A I don't think Mr. Chase consulted me with reference to his intention to form this company.

Q How did it come about then that the company was formed through the activities of Mr. Chase, and the work, or part of it, done in your office, and your clerk, Mr. MacIntosh, appearing as the secretary and treasurer?

*Mr. Ward.* I object to this entire line of testimony as immaterial and irrelevant, and to this question because it appears that the witness has no personal knowledge.

*Mr. Faulks.* Same objection.

A I can only answer that part of the question which has to do with any activities of

mine. I do not profess to answer how Mr. Chase came to do these things.

Q Tell us what you know about it, then. A I think the matter was quite casual, so far as I was concerned. Mr. Chase, who is an old personal friend of mine, and with whom I have had a good many business transactions, also, for a number of years, as I remember, indicated that he desired to hold a meeting of a company in my office—that I state as my remembrance of it; I am not trying to forget anything, but it was a thing that did not impress me at the time as having any great importance, and the matter is largely one of conjecture as to what I may or may not have done at the time. I am trying to read into the past, rather than forget it. As I remember, he asked me for the privilege of holding the meeting at the office. My recollection is that I was not present at the meeting and was not aware of what took place at that first meeting; I am very sure I wasn't in it at all.

Q You loaned, so to speak, your clerk to go to attend that meeting? A About the same relation that this meeting here today is to the Lawyers' County Association.

Q My question is whether you didn't loan him your clerks for the purpose of holding this meeting? A As I remember, he asked me for one, or maybe it was two or three qualified individuals to carry out the purposes of his company.

Q You were, of course, very glad to accommodate him? A I did accommodate him.

Q You say you don't think you attended the first meeting; what about the second meeting? A What was the second meeting?

Q You say there were several meetings held in your office.

*Mr. Faulks.* He said he didn't attend any meetings.

Q You say several meetings were held in your office and you say you did not attend the first meeting; did you attend any meeting in connection with the organization of this company? A I don't believe I did.

Q Did you attend any meetings of any character in connection with this company at any time? A You mean directors' meeting?

Q Any kind of a meeting, either directors, stockholders, incorporation, or pre-incorporation. A I will answer that positively; I did not ever attend a stockholders' or directors' meeting of this corporation.

Q Did you attend any meetings in which Mr. Chase was present, previous to the actual legal incorporation of the company?

*Mr. Faulks.* Same objection.

Q Meetings between you and Mr. Chase and anybody else? A Before the incorporation of the company?

Q Yes. A I want to make sure that I understand you.

Q I do not assume the company was incorporated out of the clear sky. You say Mr. Chase casually suggested to you that he wanted to incorporate a company. A I think Mr. Chase incorporated that company pursuant to law—formed ideas in his own mind, but casually he asked me for the privilege of holding a meeting in my office.

Q Did you have any responsibility in connection with the formation of the company, or

was that all attended to by Mr. Chase? A I think I had nothing to do with it.

Q It was attended to by Mr. Chase through the medium of— A I cannot tell you whether it was done by Mr. Chase or not; I had nothing to do with it myself.

Q You do know that Mr. Chase himself came to your office? A Yes, I am very clear on that.

Q How many times? A Does your question embrace the entire period after the company was incorporated?

Q Yes, in connection with any of the affairs of this company either before or after its incorporation? A I think he came there several times; I should say not over five times, and perhaps about five times.

Q You also know that as a result of those visits of his to your office, this company was in fact incorporated? A Oh, no; this company, to the best of my knowledge and belief, was either an entity, or fast approaching the period of its birth, when I saw Mr. Chase.

Q You know that Mr. Chase requested the loan or use of certain of your clerks for the purpose of completing this incorporation, do you not? A Not completing it; I don't know—if you will let me read that certificate of incorporation—I have never read it, so far as I know—I perhaps can tell you how near we came to completing this thing in our office. (After examining certificate of incorporation): I don't think it was completed in our office.

Q You do know he borrowed some of the clerks to hold meetings after the company was incorporated? A For continuing it.

*Beverly M. Davis, direct.*

Q Referring for a moment to this certificate of incorporation, Exhibit C. 126, is Mr. H. O. Coughlan in your office? A No.

Q L. H. Gunther? A No.

Q John R. Turner? A No.

Q They were the three incorporators, apparently? A Yes.

Q Look at the first annual report, Exhibit C. 108; is Annis Mann in your office? A She was at that time.

Q March, 1910? A She must have been.

Q Annis Mann is a stenographer in your office? A Was.

Q And she was made the president of this company, according to this Exhibit C. 108? A Yes.

Q And George A. MacIntosh was also in your office at that time? A Yes.

Q Was Stanley Bradley in your office? A Well, he was physically in my office; he wasn't an attache of the office; he was treasurer of one of the companies I am interested in.

Q Then he sort of loaned himself, so to speak, to this enterprise? A I guess I loaned him.

Q You loaned Stanley Bradley and also Annis Mann and George A. MacIntosh? A Yes.

Q John R. Turner who is named in this Exhibit C. 108, as a New Jersey director, was some person unknown to you? A I think so.

Q Turning over to Exhibit C. 109, which is the annual report filed April 4, 1911, was B. L. Leibson, who was there named as president, in your office? A Miss Leibson was a stenographer of mine.

Q Was B. L. Leibson a lady? A I presume she was and still is.

Q She was a stenographer in your office? A Yes.

Q And still is? A No, not still a stenographer in my office.

Q George A. MacIntosh is the same gentleman who appears in the other report? A Yes.

Q And Stanley Bradley is the same person? A Yes.

Q Are you familiar with any moneys which were deposited to the credit of this company—this New England Securities Company? A No, I don't think I am, excepting what I may have learned incidentally one way or another, through the press and perhaps through Mr. MacIntosh or through Mr. Chase; I don't know how much I know about it.

Q Mr. MacIntosh, who was the treasurer of this company, has testified that he deposited a check for $5,000 and drew out some of that in a check to your order; do you remember that fact? A I think so. What form it took, I don't know. I don't know that he deposited the check to his order, I am not familiar with the details of it, but I think that is in substance what took place.

Q Mr. MacIntosh has testified that he as dummy treasurer, which he said he was, drew a check for $5,000, because you told him to; do you remember that?

*Mr. Faulks.* He doesn't say he drew a check for $5,000; he said he received a check for $5,000 and drew a check to his order for a certain sum, and to Mr. Davis' order for the balance.

*Mr. English.* That is right.

Q He deposited a check and he drew some of it in a check to your order, and said he did that because he thinks you told him to; do you remember that fact? A I don't remember having told him to, although it is entirely possible that I did tell him to.

Q If you did tell him to, I suppose you didn't tell him to draw another person's money without proper authority; who authorized you to pay yourself? A I presume that unless you had reminded me that Mr. MacIntosh said I told him to, I should have said that Mr. Chase instructed him to, because my remembrance of the matter is that Mr. Warren D. Chase had the entire transaction under his own direction, and that I didn't at the time know very much about it.

Q So Mr. Chase was really the responsible person? A I think Mr. MacIntosh's testimony in that respect would have to be corrected.

Q But as you understand and remember the transaction, Mr. Chase was the man in authority in this company? A Oh, yes.

Q And whatever was done was done by his orders or instructions? A Yes.

Q And he had power, or at least exercised the power of telling the officers to draw money or deposit money, as the case may be, and they did it? A I don't know how far he either had or exercised the power, because, as I intimated, the transactions of the company as I recall them, were entirely a matter that was veiled from me, and really of no interest to me. It was but a casual matter, in general, and of no personal interest to me.

Q Mr. Chase was the man you looked to as the responsible man of the company? A Yes.

Q Mr. MacIntosh has testified to a discussion between you and him (page 918) in which the question of compensation came up, and he said that it was agreed that he (MacIntosh) should receive $250 or $300; do you remember that fact? A I don't remember that fact; I remember that he was paid that amount, $250 or $300.

Q And in connection with that general matter, you also were compensated for what your office had done in the matter? A Yes.

Q Was that an arrangement made between you and Mr. Chase? A It was pursuant to an arrangement.

Q By which your compensation and also that of Mr. MacIntosh was agreed upon? A I don't know that any agreement was made in reference to Mr. MacIntosh's payment between myself and Chase.

Q The agreement between you and Chase was as to your compensation? A Yes.

Q And you were generous enough to give Mr. MacIntosh some of it? A I am not laying any unction to my soul for generosity in the matter; I state the fact.

Q The fact is, regardless of unction, you did give MacIntosh some $250 or $300? A Yes.

Q You, Davis, kept the balance? A The amount that I kept, I assume, is a matter of personal—I kept a fee for myself.

Q And out of that fee, MacIntosh got some $250 or $300? A Yes, that is correct.

Q And that fee was received by you as a result of some arrangement which had been made between you and Mr. Chase? A My arrangement was made with Mr. Chase.

Q And the authority for MacIntosh as treasurer drawing out that money and applying it

for the payment of your bill, was by authority of Mr. Chase, was it not? A So far as I know, that is the truth.

Q Have you any recollection of sending Mr. MacIntosh up town to some office or bank? A No; I recollect that Mr. MacIntosh told me after he was here the other day that I sent him up there; I don't believe I did; that is to say, the question was the place he went. I don't believe I ever knew where he went; if that answers your question, categorically enough for you.

Q You have no recollection of it now that that was the fact? A No, I don't believe I knew where he went; I may have.

Q Do you know where the $5,000 came from which MacIntosh drew out as treasurer? A Why, no.

Q Did Mr. Chase ever tell you? A I may have known at the time; if MacIntosh says he deposited it, it was a check that he was familiar with, and if it came to me as a check, I knew who drew the check.

Q Your check, as I understand MacIntosh's testimony, was the check of this New England Securities Company. What I am inquiring of you is, if you know from whom or from what source the New England Securities Company got this original $5,000 from which these payments were made? A No, I cannot go back of it, past the $5,000.

Q Did Mr. Chase ever say to you in effect that he would be responsible for your fees? A I don't think he did.

Q Did he ever say who would be responsible? A No, I am sure he didn't. My relations with Mr. Chase are such that that is a

question that I would not expect to ask, nor assurance that I would expect him to give.

Q Chase was good enough for you, and if Chase told you you would get your money— A It wouldn't make any difference whether I got my money or not, dealing with a man like Chase.

Q You say you don't know where MacIntosh went to get that check; did he ever tell you where he went? A No.

Q Did you meet anybody else in the company besides Mr. Chase, of responsible character, outside of the clerks in your office? A I wish you would make that a little more definite.

Q To be specific, did you ever meet Mr. Edward D. Robbins in the matter? A Never.

Q Did Mr. Chase ever mention Mr. Robbins' name in the matter?

*Mr. Faulks.* Objected to as immaterial.

*Mr. Ward.* Same objection.

*Witness.* By the way, Mr. English, may I ask what your practice is with reference to ruling on objections to questions?

*Mr. English.* The objections are noted and the answer is taken by the Master, and afterwards ruled on by the Court.

*Mr. Faulks.* That is right, and you must either answer or refuse to answer. If you think it is a question you ought not to be required to answer, you can refuse to answer, but you do that on your own responsibility.

*Witness.* I should say, Mr. English, that I am not permitted to disclose to you any conversations I had with Mr. Chase, excepting as I did some act.

*Mr. English.* I am not asking for the contents of a conversation; I am simply asking whether the name of Edward D. Robbins was mentioned by Mr. Chase in connection with this transaction.

*Witness.* I don't believe it is proper for me to answer that. If he did, it would be in connection with this transaction, which would be part of the subject matter of my relation to Mr. Chase; and if it were not in connection with this matter, of course it is of no importance. I think it must be part of the subject of our relations, if it interests you, and if it is part of the subject of our relations, I do not see how I can speak of it.

*Mr. English.* You have been very frank in speaking of other matters in connection with this transaction.

*Witness.* I would like to be frank in this instance. I don't believe I am entitled to. I don't believe the law permits me to speak of it.

Q Do you know Mr. Robbins personally? A No, I do not.

Q Then you refuse to answer the question as to whether or not Mr. Chase mentioned Mr. Robbins' name in the matter? A My position is this, that if the Court shall say that it is proper to be answered, I will be very glad to answer. I do not want to be in the position of taking the attitude of willingness to disregard my relationship in this matter, and I am willing that others shall pass upon the matter.

Q Did Mr. Chase ever mention the New Haven railroad in the matter? A No Re-

ferring to the last question about Mr. Robbins, I think perhaps I am entitled to say that I believe I never heard Mr. Robbins' name in connection with this transaction, therefore it wouldn't be the subject of a communication, not having mentioned it; I believe he did not, although I have heard Mr. Robbins' name mentioned very often by Mr. Chase, by reason of the fact that I used to visit Mr. Chase in Mr. Robbins' office often as a clerk.

Q Mr. Chase used to be connected with Mr. Robbins? A Years ago he worked for Robbins in Hartford. I answer the question because I believe I can say I didn't hear him mention the name.

Q You have no recollection? A I don't let down the bars as to anything that was actually spoken of in a privileged sense.

Q Your present recollection now is that his name was not mentioned in that particular connection? A I believe not.

Q Although you have heard Mr. Chase mention Mr. Robbins' name in other matters? A Yes.

Q How long did Mr. Chase work for Mr. Robbins? A I don't remember; it is a good many years ago.

Q You say you have had a number of business transactions with Mr. Chase; were any of those in connection with matters in which the New Haven railroad was interested?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

A No, I never had any business with the New York, New Haven & Hartford Railroad, that I know of.

Q Were any of those matters in which Mr. Robbins was interested apart from this one?

*Mr. Faulks.* Same objection.

A No.

Q Are you still having business relations with Mr. Chase? A Yes.

Q How lately have you seen him? A I haven't seen him in, I should say, a month.

Q You knew the fact that Mr. MacIntosh was subpoenaed to testify here a few weeks ago, on May 25th, according to the record? A Yes.

Q Did you see Mr. Chase between the time of the serving of the subpoena on Mr. MacIntosh and the time of his appearing here and testifying? A Yes.

Q That was in connection with the testimony to be given by Mr. MacIntosh? A Well, I should not say that; I presume that Mr. Chase has a very intense interest in what is going on here, and I advised him of the fact; I think I advised him; at any rate, he was advised of the fact that Mr. MacIntosh had been subpoenaed, and I presume—he said he was in town on other matters, and he called up and called in.

Q With reference to McIntosh's proposed testimony? A No, I should say I was somewhat disappointed on that.

Q That was also casual, like the incorporation of the company? A Hardly casual; I should think it wouldn't take a very great acumen to see that that interview was more or less a result of the fact of the service of the subpoena, but after Mr. Chase called I couldn't quite see the object of the call.

Q Were you with Chase and MacIntosh all the time they were there? A I think so.

Q I suppose you advised Mr. Chase you had been subpoenaed in this matter? A I hadn't.

Q I mean since you have been subpoenaed; you are here under subpoena? A Oh, yes, I think so.

Q You advised him of that fact? A Surely.

Q Did he make a casual call on you? A No.

Q Or write a casual letter? A No.

*Cross examination* by Mr. Faulks.

Q When Mr. Chase saw Mr. MacIntosh this last spring, at the time you have told us about, didn't he simply say to him that he hoped that he would come here and tell all he knew about the New England Securities Company? A He told him precisely that; Mr. MacIntosh asked some questions.

*Mr. English.* Were you there?

*Witness.* Yes; Mr. MacIntosh asked some questions as to what actually did occur, something Mr. MacIntosh didn't know about and expected to be asked about, and I have forgotten just the form of this reply to him, but the substance of it was to tell what he knew, and that is all he could tell. Mr. Chase's attitude was—

*Mr. Faulks.* We don't care about that.

Q He told him to come and tell all he knew about it? A Yes.

Q How long have you known Mr. Chase? A For many years.

Q You have been both business friends and social friends? A Precisely.

Q You have had different business transactions with him from time to time? A Yes.

Q Your law business being in New York and his in Connecticut? A Yes.

Q When he asked you to loan your office, so to speak, and furnish from it certain qualified individuals to act in the matter of the incorporation, you didn't regard that as unusual? A No, I regarded it as the customary courtesy of an office to an outside attorney.

Q You were very glad to be able to accommodate him, I suppose? A Yes.

Q You simply know that Mr. Chase would see that you were fairly compensated for whatever you might be able to avail him in the way of help of that kind; is that not the fact? A Yes.

Q And when you received the compensation that you did receive, whatever it was, that was simply a matter of agreement between you and Mr. Chase as to what the services had been fairly worth? A Yes.

Q Apart from that, that is, the agreement with Mr. Chase to facilitate him in that way and agreeing with him as to the amount of your compensation, did you have any other part in the affairs of the New England Securities Company? Did you take any active part in the business of the company? A In the corporate meetings?

Q Corporate action of the company, whatever action of the company as such it may have taken, either through its board of directors or stockholders or committee or any of its officers? A No, I did not.

Q You said in answer to one of Mr. English's questions explaining your lack of knowledge of some subject about which he was interrogating you, that the matters were veiled from you; did you mean by that anything more than you had no knowledge of them? A That was all. I didn't mean to indicate that I was con-

scious of any purpose to hide anything from me, as to which I should have a right or a duty to inquire; on the contrary, it was none of my business to ask questions.

Q You didn't mean to say anything was concealed from you about anything of which you made inquiry? A Not at all.

*Re-direct* by Mr. English.

Q You had no particular knowledge as to what this company was formed for; you didn't inquire? A I think I cannot quite say no to that; I think I did have a knowledge of what this company was formed for; it might not have been accurate knowledge, but I think it was. I think I was told by Mr. Chase that this company was being formed—I think, perhaps, was told the day that the meeting was had in my office, that this company was being formed for the purpose of holding a steamship property; I think I knew that.

Q Did he mention what property? A I don't think he did. That is to say, I don't think I have ever had any adequate knowledge of what this company owned. I haven't now; I think I had an intelligent understanding that this company was to hold a steamship property.

Q Was he specific as to what steamship property or what property that consisted of? A I don't believe that I had any specific knowledge as to what the steamship property was. That is, of course, a broad, vague question, and only a broad, vague answer. I don't think I knew any more than that it was a steamship property; that is all. I may have known that the Yale and Harvard were part of that property. I don't affirm or deny that I did.

*Beverly M. Davis, re-direct.*

Q But you think probably you did? A I think I may have.

*Re-cross* by Mr. Faulks.

Q You have no recollection on the subject at all, as I understand, except that it was a steamship property of some kind that the company was to be interested in? A Yes. Mr. Faulks, it is very easy to read back now knowledge that I have gained from other sources, and it is very difficult to be absolutely sure of what I may have known at the time.

Q You heard a good deal about this case or read a good deal about it in the papers and have information now, that you cannot tell just when you obtained it? A Precisely that.

Q You have told us of the information that you had at that time in so far as you recollect it? A Yes.

*Re-direct* by Mr. English.

Q Do you happen to know Mr. Edward T. Canfield of Hartford? A No, I don't think I ever heard of him until I read this case.

Q Do you know Mr. Douglas Nicholson; this gentleman sitting here? A I think I do.

Q How long have you had the honor of his acquaintance? A I think we were mixed up in a case together once before.

Q How long ago was that? A About five, six or seven years ago.

Q Did you have any business with him in March, 1910, or the early part of 1910? A I don't think so. You mean, I presume, in reference to this matter?

Q Yes. A I am not conscious of it.

*Arthur E. Clark, direct.*

ARTHUR E. CLARK, being duly sworn according to law, in behalf of complainants, testifies as follows:

*Mr. Faulks.* I desire to have it appear on the record before the examination of the witness is begun, that I object to his examination under the subpoena, which has been issued to him, upon the grounds upon which I have already moved for a vacation of that subpoena.

*Judge Simpson.* That may be so noted on the record.

*Mr. Faulks.* And in that connection I desire to have the subpoena which has been issued to Mr. Clark, and which has been handed to me by your Honor, marked for identification, in order that it may be produced at the proper time, to show that it was issued prior to the date of the notice under which the deposition is purported to be taken.

(Marked Exhibit D. 11 for identification.)

*Direct examination* by Mr. English.

Q Where do you live? A Wallington, Connecticut.

Q You are not a resident of the State of New Jersey? A I am not.

Q I show you a subpoena which the defendant's counsel has had marked Exhibit D. 11 for identification; you recognize that as the original of the subpoena which was served upon you in these proceedings? A Yes.

Q That was served on you on the second of June, 1915? A Yes.

*Arthur E. Clark, cross.*

*Mr. English.* I offer the subpoena in evidence, containing the deputy sheriff's return.

*Mr. Faulks.* Before the subpoena is admitted, I want to ask the witness a question with reference to the time when it was served upon him.

*Cross examination* by Mr. Faulks.

Q Mr. Clark, I direct your attention to this subpoena, marked Exhibit D. 11 for identification, bearing date June 1, 1915, and ask you to tell us when it was served upon you—

*Mr. English.* What hour of the day?

Q (Continuing.) On what day and what hour of the day?

*Mr. English.* I object to any evidence as to what hour of the day, on the ground that it is immaterial, it already appearing that it was served on June 2nd.

*Judge Simpson.* I will allow the question.

A June 2nd, 9:15 A. M., about.

*Mr. Faulks.* I object to the reception of this subpoena in evidence.

*Judge Simpson.* I will admit it.

*Mr. Ward.* I also make the same objection.

*Mr. Faulks.* I think I ought to call your attention to the fact that under our practice in New Jersey, the officer before whom a deposition of this kind is taken has no authority to rule.

*Judge Simpson.* I understand that. I ruled as a matter of force of habit. You can raise these same objections, I under-

stand, when these depositions are offered in evidence.

(Subpoena heretofore marked Exhibit D. 11 for identification, is now marked Exhibit C. 167.)

"To Arthur E. Clark,
Sec'y of N. Y., N. H. & H. R. R. Co.

*Greeting:*

By Authority of the State of Connecticut, You are hereby commanded to appear before me, a Judge of the Court of Common Pleas, within and for the County of New Haven, on Monday, the 14th day of June, 1915, at 10 o'clock in the forenoon, at my office, Room No. 904, Chamber of Commerce Building, No. 185 Church street, New Haven, Connecticut, then and there to testify, and give your deposition as to what you know in a certain cause wherein Jennie R. Morse, et al, are complainants, and the Metropolitan Steamship Company, et al, are defendants, pending in Chancery of New Jersey.

Fail not, etc.

Dated at New Haven, this 1st day of June, 1915.

To any proper officer or indifferent person to serve and return.

(Signed) EARNEST C. SIMPSON,
*Judge of the Court of Common Pleas for New Haven County.*

*Arthur E. Clark, direct.*

STATE OF CONNECTICUT, }
COUNTY OF NEW HAVEN, } *ss:*

New Haven, June 2, 1915.

Then and there I made service of the within subpoena by reading the same in the hearing and to the understanding of the within named witness, and by placing in his hands a true and attested copy hereof and I paid to him the lawful fee.

| | | |
|---|---|---|
| Fees: | travel | .40 |
| | reading | .12 |
| | copy | .12 |
| | endorsements | .24 |
| | | .88 |
| | paid witness | .60 |
| | | $1.48'' |

Attest:

JOHN W. HUTT,
*Deputy Sheriff.*

*Further direct* by Mr. English.

Q You testified in these proceedings, under a subpoena served on you by the defendants in this case, last May, before a New Jersey commissioner, Jesse R. Salmon, a master in chancery, did you not?

*Mr. Faulks.* Objected to as immaterial.

*Mr. Ward.* I object to it on the same ground, and also because the question does not correctly state the fact. It was not on notice of all of the defendants.

Q I will amend the question: on the application of the defendants, represented by Mr. Faulks, or some of them?

*Mr. Faulks.* Same objection.

A Yes.

Q You were served, or attempted to be served, with a subpoena in this same case, issuing out of the Supreme Court of the State of New York, in New York county, in December, 1914, were you not?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Objected to on the ground that it is immaterial, irrelevant and incompetent.

A I was served—I don't remember just when—from some New York court.

Q And you failed to appear in response to that, but sent an attorney to represent you, representing that the subpoena had not been properly served? A I did.

*Mr. Ward.* I make the same objection.

*Mr. Faulks.* It is understood that our objections stand to all this line of examination?

*Mr. English.* Yes.

Q And you know, as a matter of fact, that the complainant has been endeavoring to secure your testimony for some time in this matter? A I am perfectly aware of that fact, sir.

Q That is one thing we can agree on? A Yes, sir, in more ways than one.

Q You haven't been aiding them in that quest? A I have not. I haven't run away from it, however.

Q You are secretary of the New York, New Haven & Hartford Railroad Company? A I am.

Q And have been how long? A Since October, 1910.

*Arthur E. Clark, direct.*

Q Prior to that you were assistant secretary? A Yes.

Q And occupied that position how long? A I should say a little less than a year or about a year.

Q At the time you were assistant secretary, Mr. John G. Parker was secretary? A He was.

Q And you succeeded him? A Yes.

Q You were connected with the secretary's office prior to becoming assistant secretary? A Yes.

Q How long? A Since 1904.

Q You were at that time, prior to becoming assistant secretary, chief clerk of the secretary's department? A Yes.

Q And during all this time you had under your custody and in your possession, or had access to, the records of the New Haven railroad company? A Yes.

Q Who is the treasurer of the New Haven railroad company? A Mr. A. S. May.

Q How long has he been such? A About twelve years, I think.

Q The New Haven Railroad Company has safe deposit vaults in the city of New Haven, has it not? A Yes.

Q And those vaults are numbered? A Yes.

Q From one to what? A I don't know.

Q It runs up as high as eight, doesn't it? A Yes.

Q More than that? A Yes.

Q Do you know how many more? A No.

Q From your knowledge of the records of the company, do you know whether the records show that at a meeting of the Board of Directors, held on July 11, 1908, the custodians of securities reported to the effect that on June

29, 1908, they had removed certificates representing 109,948 shares of stock of the Boston & Maine Railroad Company and delivered them to the treasurer, who receipted for them? A I don't remember.

*Mr. Ward.* I object to that question on the ground that it is immaterial, irrelevant and incompetent, and that it relates to matters and actions with which the Pacific Navigation Company had no part; that the action and matters called for are not in pursuance of the conspiracy alleged in the bill of complaint, and that the parties concerned in this matter do not appear to have been acting in pursuance of a conspiracy as alleged in the bill of complaint. I suppose my objection may stand to questions along this line?

*Mr. English.* That is satisfactory to me.

Q Do you know Mr. John L. Billard, of Meriden, Connecticut? A I do.

Q He was at one time a director of the New Haven railroad? A He was.

Q Is he now a director? A No, sir.

Q Do you know when he became a director?

*Mr. Faulks.* Objected to as immaterial.

A I don't recall the date.

Q Do you remember when he was elected a director? A I don't recall the date.

Q It was in 1909? A I don't recall.

Q It is true, is it not, that the New Haven railroad company during the year 1909 endeavored to part with its title to certain shares of stock of the Boston & Maine Railroad Company?

*Mr. Faulks.* I object to that as not only immaterial and irrelevant, but as calling

for a conclusion on the part of the witness as to a matter which is left in very indefinite shape in the question itself. It does not call for any statement of fact.

*Mr. Ward.* Same objection, and the additional objection that the questions call for matters which ought not to be proved by oral testimony, but by the records.

*Mr. English.* I withdraw the question.

Q Is there an executive committee of the Board of Directors of the Railroad company? A Yes.

Q And that executive committee keeps minutes? A Yes.

Q And has for years past? A Yes.

Q And you as secretary have charge of those minutes? A Yes.

Q And as assistant secretary, had access to them? A Yes.

Q And the same is true of your position as chief clerk? A Yes.

Q From your familiarity with the records of the company do you remember that on October 8, 1909, the executive committee of the New Haven Railroad passed a resolution in which it was voted that the plan explained at that meeting for carrying out the contract of June 30, 1909, regarding the 109,948 shares of Boston & Maine Railroad common stock, and for acquiring securities of the Boston Railroad Holding Company to be issued for said stock, in the ratio of $15 of stock and $125 of four per cent. bonds of the Holding company for each share of Boston & Maine Railroad stock is approved, provided that all the shares of stock of the Billard Company and all profits, actual or nominal, realized by Mr. Billard, less a reasonable

compensation for his services and risks, and the amount of his actual expenses in connection with the purchase and sale of Boston & Maine stock, be first vested in the New York, New Haven & Hartford Railroad Company, and subject to the disposition of its Board of Directors? Do you remember such a resolution? A I do not remember it.

Q Do you remember the fact that the Interstate Commerce Commission conducted an investigation of the financial transactions of the New York, New Haven & Hartford Railroad Company? A Oh, yes, perfectly.

Q And when was that, during the summer of 1914? A It was done at so many times, I don't know. I think probably 1914.

Q I refer specifically to an investigation made in accordance with a certain resolution of the United States Senate, passed February 7, 1914, and a further resolution of the Senate of June 24, 1914? A Yes.

Q And you testified in connection with those proceedings? A I did.

Q At Washington? A I did.

Q Before a commission? A I did.

Q I presume, of course, you endeavored to, and did, testify correctly at that proceeding? A I did.

Q And you had the records before you? A I did.

Q Do you remember that you were interrogated by a Mr. Gartner? A Yes, sir.

Q And also by Mr. McCord, one of the commissioners? A I don't remember that Mr. McCord ever questioned me.

Q Mr. Gartner did? A Yes, sir.

*Arthur E. Clark, direct.*

Q I hold in my hand a printed book relating to this investigation from the Government Printing Office; you have seen one of the duplicates of that book, haven't you? A Let me see it, please. (Witness shown book.) Yes, I have seen it.

Q You have probably one of them in your office? A Yes, sir.

*Mr. Ward.* What document number is it?

*Mr. English.* I refer to a book, as printed on the outside cover, "Sixty-third Congress. Senate Session. Senate Document No. 543. New York, New Haven & Hartford Railroad Company. Evidence taken before the Interstate Commerce Commission relative to the financial transactions of the New York, New Haven & Hartford Railroad Company, with a report of the commission thereon," in two volumes. Volume I, hearings with index.

I will ask to have Volume I marked for identification.

(Marked Exhibit C. 168 for identification.)

Q And this particular Volume I, marked Exhibit C. 168 for identification, has in it on page 150 and running through to page 159, a report of the testimony given by you. Just verify that? A Yes, sir, that purports to be the testimony given by me.

Q Do you remember testifying before the commission, as appears on page 156 of this book, Exhibit C. 168 for identification, the following—

*Mr. Faulks.* Before you read anything from that book into the record, I submit that this method of examination is highly improper and ought not to be permitted.

The witness has not been subpoenaed to produce any of the records of the company, and has been asked with reference to certain records, and has said that he does not recollect at this time what they were or what they contained, which is very natural. It certainly cannot be proper to read into this record, and in that way get into the case, evidence which he may have given in some other proceeding. It cannot be proper if it is attempted to secure his evidence in this proceeding in that way, and it certainly cannot be proper for the purpose of contradiction or anything of that kind. The witness is called by the complainant and I object to this method of examination. I object to the inclusion in the record of any evidence which he gave in any other proceeding, and I submit that there is no rule of evidence that will warrant this practice.

*Mr. Ward.* I object on the ground that there is no justification for this procedure. What the witness has said at another time and in another proceeding is strictly hearsay. The printed record of the testimony that he then gave cannot be used to refresh his recollection now, and cannot be used to contradict him.

*Mr. English.* Before I press that question I will ask another one.

Q You as secretary have the custody and possession of these records, have you not? A Yes.

Q And that includes the record of the Executive Committee meeting of October 8, 1909? A Yes.

Q And the Board meeting of that date? A Yes.

Q It is in your power to produce those, if you chose to do so? A I doubt it.

Q If it were in your power, are you willing to produce them? A No, sir.

Q You as secretary sometimes certify copies of minutes? A Oh, yes.

Q And I assume, of course, that you certify them correctly? A Yes, sir.

Q I show you a paper which bears the signature "A. E. Clark, Secretary," and what appears to be the seal of the New York, New Haven & Hartford Railroad Company, and ask you if that is your signature and the seal of the company? A That is correct.

Q That is your signature and the seal? A Yes.

Q And that is a correct certification by you of a record—of a part of the records of the New Haven Railroad Company?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A Yes.

Q This paper which you have identified as bearing your signature and seal, correctly sets forth that part of the records of the minutes of the Board of Directors or of the Executive Committee which it purports to set forth?

*Mr. Faulks.* I make the same objection, and renew my objection to this method of procedure. The minutes of the Board of Directors of the New Haven Railroad or minutes of its executive committee ought to be proven by the production of the minute books themselves, if at all, and I submit

that it is not proper to inquire with reference to what may or may not be a certified copy of some of those minutes. The witness has not been served with a subpoena requiring the production of any of the records; he has been asked with reference to what certain of the records contain, and says he does not remember, and it surely cannot be proper for counsel for the complainants to either attempt to refresh the witness' recollection through what purports to be a copy of such records, or to attempt to contradict his previous statement that he does not remember what they contain.

A Yes.

Q Mr. Clark, you were subpoenaed in August or September, 1914, were you not, to appear before one Thomas F. McCone, a notary public and commissioner of the Superior Court of Connecticut, at Hartford, to give some testimony in this matter? A I don't remember I was subpoenaed at some time.

Q You remember the fact that you were subpoenaed to appear at Hartford? A Yes.

Q In this same case? A Yes.

Q And on that particular occasion you were served with a subpoena *duces tecum* to produce the records of the New Haven Railroad Company in your custody as secretary? A I cannot say.

Q Try to recollect. A I don't know whether it was a *duces tecum* or a personal subpoena; I don't remember which it was.

Q Don't you remember that you joined as a complainant in a suit in the Connecticut courts, to enjoin the Commissioner McCone from proceeding in that matter, or in conformity with

that subpoena? A I believe so; some such action was taken.

Q And the injunction went to the effect that both the commissioner and the complainant's counsel in this proceeding now pending in the New Jersey Court of Chancery were enjoined from examining you, or requiring you to produce any records?

*Mr. Faulks.* I object to the question on the ground that it is immaterial, and upon the ground that that is not the way to prove the issuance of an injunction or its contents.

*Mr. Ward.* Same objection.

A I understand it so.

Q And the records in that proceeding which the complainant and her counsel were enjoined from seeking to examine upon, were the records of the Executive Committee and the Board of Directors of the New Haven Railroad Company?

*Mr. Faulks.* Same objection.

A I don't remember.

Q You won't say they were not?

*Mr. Faulks.* He says he doesn't remember.

A I don't remember; that is the fact; I don't remember; that is my answer.

Q You were subpoenaed as secretary, were you not? A I don't remember.

Q Have you as secretary custody of any other records than the minutes of the Board and Executive Committee? A What records?

Q Records of the New Haven Railroad. A What records of the New Haven Railroad; what kind of records?

*Arthur E. Clark, direct.*

Q I am asking you if you have custody of any of the records other than the records of the board meetings and executive committee meetings of the New Haven Railroad? A Yes, deeds and location plans.

Q It is not your recollection that you were directed to bring any deeds or location plans? A No.

Q Isn't it your recollection that you were asked to produce the records of the Board and Executive Committee meetings? A I cannot recall that.

Q You have no recollection to the contrary then? A No.

Q I again call your attention to the paper which bears your signature, and on which the seal of the company is affixed, which you have identified, and I will have it marked for identification, so that we won't become confused about it—

(Paper referred to marked Exhibit C. 169 for identification.)

"At a meeting of the Board of Directors of The New York, New Haven and Hartford Railroad Company, held pursuant to legal notice at the office of the Company in the City of New York on Friday, October 8th, 1909:

'The Executive Committee of the Board of Directors of The New York, New Haven and Hartford Railroad Company submits the following report of its meeting held pursuant to notice at the office of the Company in the City of New York on Saturday, October 2nd, 1909.

* * * * * * * * *

VOTED, That the plan explained at this meeting for carrying out the contract of June 30, 1909, regarding one hundred nine thousand, nine hundred and forty-eight (109,948) shares of Boston & Maine Railroad common stock, and for acquiring securities of the Boston Railroad Holding Company to be issued for said stock in the ratio of Fifteen (15) dollars of stock and One hundred twenty-five (125) dollars of four (4) per cent. bonds of the Holding Company for each share of Boston and Maine Railroad stock is approved, provided that all the shares of stock of The Billard Company and all profits, actual or nominal, realized by Mr. Billard, less a reasonable compensation for his services and risks, and the amount of his actual expenses in connection with the purchase and sale of Boston and Maine stock, be first vested in The New York, New Haven and Hartford Railroad Company and subject to the disposition of its Board of Directors.

On motion the meeting then adjourned.

(Signed) JOHN G. PARKER, Secretary.

On motion, duly seconded, it was thereupon

VOTED, That the foregoing report of the Executive Committee be accepted, approved and confirmed.'

A true copy of record.

A. E. CLARK,
Secretary.''

(N.Y.N.H. & H.R.Co.)
[SEAL]

Q Isn't it true that the resolution of the Executive Committee, a true copy of which you say is set forth on this Exhibit C. 169 for identification, was presented to and ratified by the

vote of the Board of Directors on the same day, namely, October 8, 1909?

*Mr. Faulks.* I object to this question and I again submit that this is not the proper way to prove the records of the company or the action taken by its representative, whether it be its Board of Directors or its Executive Committee or other records.

*Mr. Ward.* I object on the ground that the primary evidence must be produced.

A I don't know; I don't recall.

Q I show you another paper which seems to bear the signature of A. E. Clark, secretary, and the seal of the railroad company, and ask you if that is your original signature, and if it is the seal of the company? A Yes.

*Mr. English.* I will ask to have that paper marked for identification.

(Marked Exhibit C. 170 for identification.)

"At a meeting of the Board of Directors of the New York, New Haven and Hartford Railroad Company, held pursuant to legal notice at the office of the Company in the City of New York on Friday, October 8th, 1909:

'The president reported that under the contract for the purchase and sale of one hundred nine thousand, nine hundred and forty-eight (109,948) shares of common stock of the Boston and Maine Railroad, owned by Mr. John L. Billard of Meriden, Connecticut, and acting under authority of the Executive Committee, he had purchased these shares of Boston and Maine Railroad stock held by Mr. Billard, delivered them to

the Boston Railroad Holding Company, and adjusted with Mr. Billard so far as he was able to, up to the time of this meeting, so that the situation is as follows:

This company had:

| | |
|---|---|
| Notes of the New England Investment & Security Company at par..... | $16,250,000.00 |
| Cash in the Farmers' Loan & Trust Company ..... | 11,000,000.00 |
| In the treasury of the New England Navigation Company notes of John L. Billard ..... | 2,743,000.00 |
| | $29,993,000.00 |
| There is now in the treasury of this company stock of the Boston Railroad Holding Company ..... | $1,649,200.00 |
| Bonds of the Boston Railroad Holding Company... | 13,743,000.00 |
| Stock of the Billard Company | 2,000,000.00 |
| Bonds of the Billard Company | 14,250,000.00 |
| | $31,642,200.00 |
| This shows a profit of.... | $1,649,200.00 |

That he was to secure an assignment of this profit, but did not have time to do so in advance of this meeting; that he holds the same, subject to an adjustment of interest with Mr. Billard upon his return to New Haven; and asked that his action in the matter, so far as reported, be approved.

Whereupon on motion, duly seconded, it was

VOTED, That the action of the president as above reported be approved, ratified and confirmed.'

A true copy of record.

A. E. CLARK,
*Secretary.''*

(N. Y., N. H. & H. R. R. Co.)
[SEAL.]

Q And that relates to a meeting of the Board of Directors of the Railroad company, held on October 8, 1909?

*Mr. Faulks.* I object to the question on the same grounds.

A Yes.

Q And that part of the minutes of that meeting which you have certified to upon this Exhibit C. 170 for identification, is a true transcript of the original minutes as they appear in the book?

*Mr. Faulks.* Same objection.

Q Yes.

Q Don't you remember that at the hearing of the Interstate Commerce Commission in Washington, at which you testified, upon interrogation by Mr. Gartner, that you had before you the original records and that you read into the record, in identical language, that part of the minutes of the executive committee of the New Haven railroad, held on October 8, 1909, and which now appears on Exhibit C. 169 for identification?

*Mr. Faulks.* I make the same objection; namely, that it is immaterial and incompetent, and not the proper way to attempt to prove the records of the New Haven railroad company, or any other corporation,

and known so to be, and counsel should not insist upon it.

*Mr. Ward.* Same objection.

A I presume I did.

*Mr. English.* Counsel who insists upon it, says that circumstances alter cases, and the complainant is enjoined from securing the original records, and this is the best that counsel is able to do to secure the proof.

*Witness.* You secured them in a roundabout way. It seems to me that ought to go in the record, too.

Q You haven't any doubt about it, now that your mind is brought back to it? A I don't think so.

Q And isn't it equally true that, on the testimony which you gave before the Interstate Commerce Commission at Washington, upon interrogation by Mr. Gartner, you testified from the records, in identical language with the resolution of the board of directors as set up in Exhibit C. 170 for identification?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A Yes.

*Mr. English.* I offer in evidence a certified copy of the minutes of the executive committee, dated October 8, 1909, which is now marked Exhibit C. 169 for identification.

*Mr. Faulks.* I object to the reception of this paper in evidence on the ground that it and its contents are irrelevant, immaterial and incompetent to the decision of any is-

sue in this suit; also, that the attempt to prove certain records of the board of directors or of the executive committee of the New York, New Haven & Hartford Railroad Company in this way is incompetent and improper. This paper is not one of the records of the company; it does not purport to have been produced from its records or its files, and is nothing more than a certified copy of a portion of such records now produced from the custody of counsel for the complainants. These records, if competent for any purpose, ought to be proved in accordance with the rules of law, which are well known to counsel for the complainants. There is absolutely no proof in the case that the records of the New Haven railroad company are not available.

*Mr. English.* I will say in answer to that, that at the hearing of the cause that will be proved, because I was personally served with an injunction, to which this witness, among others, was a party.

*Mr. Ward.* I object on the same general grounds stated at the outset of this examination, because it is secondary evidence, and no foundation has been laid to permit its use.

(Minutes of Executive Committee, dated October 8, 1909, marked Exhibit C. 169.)

*Mr. English.* I make a like offer in evidence of the extracts from the minutes of the meeting of the Board of Directors held on October 8, 1909, identified by the witness and now marked Exhibit C. 170 for identification.

*Mr. Faulks.* I make the same objection.

*Mr. Ward.* Same objection, as to C. 169.

(Minutes of the Board of Directors, dated October 8, 1909, marked Exhibit C. 170.)

Q Mr. Clark, did you personally cause that injunction suit out of the Connecticut courts to be brought, or was that brought by the authority of the officers of the New Haven Railroad Company?

*Mr. Ward.* I object on the ground that it is absolutely immaterial, incompetent and irrelevant.

*Mr. Faulks.* Same objection.

A I don't know; I handed it over to our attorneys and they took charge of it.

Q When you say your attorneys, you mean the railroad company's attorneys? A Mr. Spock.

Q The railroad company's? A No, sir.

Q Were you personally out of pocket as the result of that proceeding? A No, sir; peace of mind, that was all.

Q You spoke a moment ago, or early in your testimony, that you doubted if you would have authority to produce the records, even if you desired to do so; why did you say that? A I am custodian of the records for the Board of Directors.

Q And you are subject to their orders in that respect? A Yes.

Q The fact is that they are unwilling to have them produced in this hearing, isn't that so? A I don't know that.

Q (Last question repeated.) A I don't know whether they are willing or unwilling.

Q Of course, they have the authority to say about that one way or the other? A Yes, sir.

Q They are your superior officers? A Yes.

Q The testimony which you gave in Washington, to which I have referred this morning, was given, as appears from this book, in April of 1914? A Yes, sir.

Q Following that testimony in April of 1914 did you make further investigation into the files of the records of the New Haven Railroad Company and find some memoranda relating to the general transaction referred to in the exhibits C. 169 and C. 170, which memoranda had been made by Mr. Mellen?

*Mr. Ward.* I object on the ground that the memoranda will speak for themselves.

*Mr. English.* The question is whether he made an examination and found such memoranda.

*Mr. Ward.* It calls for an answer whether there is in existence a paper or not, and more than that, it somewhat indicates its contents.

*Mr. Faulks.* The question only calls for a "yes" or "no" answer, and therefore I do not object.

A Yes.

Q These records, I suppose, are now with the other records of the New Haven Railroad Company in the secretary's office? A I cannot say; I have lost so many papers by their being taken away from me, I wouldn't swear they are now, without looking.

Q They ought to be there? A They ought to be there.

Q And these memoranda of which I speak were produced in June of 1914, before the In-

terstate Commerce Commission as exhibits in that proceeding? A Which memoranda?

Q The memoranda which you found, made by Mr. Mellen, and which related to the subject matter of the two exhibits in evidence here, C. 169 and C. 170? A I produced no such memoranda before the commission.

Q When you say that, you mean they were not officially produced by you? A No.

Q But they went before the commission just the same, did they not?

*Mr. Faulks.* Objected to as immaterial and irrelevant. It is something that happened long after the beginning of this suit, and I submit that the question is incompetent.

A I think it says so in that book (indicating).

Q They were set up in Volume 2 of this same proceeding, were they not; you identify Volume 2 as one of the printed records, the addendum volume of Exhibit C. 168 for identification? A Yes.

*Mr. English.* I will ask to have that Volume No. 2 marked for identification.

(Marked Exhibit C. 171 for identification.)

Q And the memoranda to which I refer appear on pages 2022 and 2023 of that book?

*Mr. Faulks.* Objected to as immaterial and incompetent, and an improper way of examination. I submit that the question is also unfair to the witness as well as to the defendants, in that the witness cannot possibly remember whether that is an exact copy of the memoranda mentioned or not.

*Mr. Ward.* I object also because it does not appear that the witness has personal

knowledge of the fact that these papers were produced before them.

A I don't remember.

Q (Last question repeated.) A I have no means of saying that that is a correct transcript of the memoranda I forwarded, if any.

Q You do remember that you found memoranda in general terms quite similar to that which appears on pages 2022 and 2023 of this book, Exhibit C. 171 for identification?

*Mr. Faulks.* Objected to as incompetent and also as to its being too indefinite to amount to anything.

A I don't remember the general terms of the memoranda.

Q Suppose you read it over and get it back in your mind. A I cannot testify from that; that is a memorandum which I found, or a copy of it.

Q I didn't ask you that; I asked you if the memorandum which you found was not generally similar to that which appears in this book on the pages which I have named?

*Mr. Faulks.* I object to the witness reading this, and I submit that this method of cross examination is unique and entirely wrong. The witness has not been subpoenaed to produce the memorandum; he has said that he didn't produce it in Washington before the commission; he says he does not remember it, and now he is asked to read a printed and unproven copy of what purports to be a transcript of some proceedings had in Washington before the commission, and in this way try to form some

conclusion as to whether or not this printed copy is something like the original, and I object to it.

*Mr. Ward.* Same objection. Mr. English, are you referring the witness to a part of what is said to be his testimony in Washington?

*Mr. English.* No, I am referring him to the part of the official record taken before the Interstate Commerce Commission.

*Mr. Faulks.* I make the further objection that there is nothing in the case to indicate that this memorandum would in any event be found to represent any action on the part of the company; it does not purport to be any memorandum of any action of the Board of Directors or of the executive committee, and surely the defendants in this case cannot be bound by some unexplained memoranda of an officer of another company, even if its existence were proven.

*Mr. Ward.* I object on the ground that it is hearsay.

A I cannot say.

Q Do you know Mr. W. D. Hines? A Yes.

Q After you found these memoranda, you turned them over to him, did you not?

*Mr. Faulks.* Objected to as immaterial.

A Yes, sir.

Q And the papers which you turned over to him are substantially set forth in this book, Exhibit C. 171 for identification, at pages 2022 and 2023?

*Mr. Faulks.* Same objection.

A I cannot say.

*Arthur E. Clark, cross.*

Q At any rate, you furnished Mr. Hines with correct copies of those memoranda?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Objected to as immaterial.

A No.

Q Did you furnish him incorrect copies? A No copies that I can recall.

Q Did you give him the originals? A I don't recall furnishing any copies.

Q I ask you now if you gave him the originals? A Oh, no.

Q How did Mr. Hines get them in his possession? A I simply don't recall how he got them in his possession; I don't recall furnishing him any copies.

Q You do remember finding originals of those memoranda? A Yes.

Q And speaking to Mr. Hines about them? A Yes.

Q Do you go so far as to say that you have no recollection of giving him either the originals or a copy? A I don't recall, personally.

Q It might have been done by your office? A Yes.

Q Under your instructions? A Yes.

Q So as a matter of fact, whether done by you personally or through the medium of some clerk in your office, either the originals or copies of them got into the possession of Mr. Hines; that is a fact? A Yes.

*Cross examination* by Mr. Faulks.

Q Mr. Clark, as a matter of fact did the New York, New Haven & Hartford Railroad Company ever acquire the stock of The Billard Company which is mentioned in these Exhibits C. 169 and C. 170? A I never knew that they did.

Q Without in any way abandoning my objections to the methods of examination which have been used this morning, I desire to ask you whether the Board of Directors of the company, after the passage of these resolutions marked Exhibits C. 169 and C. 170, ever took any further action with reference to their subject matter, and if so, whether that action is shown in an extract from the minutes of the meeting of the board held on June 15, 1911, which appears on page 157 of the Exhibit C. 168 for identification?

*Mr. English.* You are asking him to do what you object to my doing.

*Mr. Faulks.* If your evidence goes in, then this will go in.

A Yes.

Q The resolution, or a copy of it, to which I have directed your attention appears on page 157 of this Exhibit C. 168 for identification? A Yes.

Q And that resolution was adopted on June 15, 1911? A Yes.

Q And does that resolution read as follows:

"The President stated that his attention had just been called to the fact that he had omitted to make a formal report to the Board regarding the final adjustment with Mr. John L. Billard in connection with the purchase from him of stock of the Boston & Maine Railroad Company, and that he desired now to report that on that adjustment it had appeared that this company had no claim, legally or equitably, to any interest in the capital stock of The Billard Company; whereupon it was VOTED, That the action

of the President as just reported is approved, and his adjustment with Mr. Billard without acquiring any interest in any of the capital stock of The Billard Company is hereby ratified and confirmed.''

A That is right.

Q I now show you, Mr. Clark, Exhibit C. 171 for identification and direct your attention to portions thereof appearing on pages 2189 and 2190, marked ''Exhibit Billard A;'' without prejudicing my position that the records of the company cannot be proven in the way that has been attempted this morning, I ask you whether or not that part of the book marked Exhibit C. 171 for identification does not contain a copy of the contract of June 30, 1909, which is referred to in the Exhibit C. 169? A Yes, sir, I think so.

*Mr. English.* This page ought to be marked for identification.

Q And is that also a copy of the contract which is referred to in Exhibit C. 170?

*Mr. English.* I ought to object because the defendants' counsel is doing exactly what he criticised me for, without the same reason, because he controls the witness—at least claims he controls the witness, and he can get this original document.

*Mr. Faulks.* I in no way control the witness and I am only resorting to this method of examination because it has been insisted upon by counsel for the complainants. If my objection to that method of examination is sustained, this cross examination so far as it relates to the same record, will, of course, also fail. If—as I believe cannot prove to be the case—the direct examina-

tion should be sustained, then, of course, I want the benefit of this cross examination, and am entitled to it. I quite agree with counsel for complainants that the method of examination is not correct, and again point out that it is only resorted to because of the insistence of its adoption by counsel for the complainants, and because I do not want to be deprived of a cross examination of the witness.

*Mr. English.* I make the further objection that this method of proof does not prove the execution of the paper. I think Mr. Robbins' appearance here ought to be noted on the record. He is very active in participating in this case and assisting counsel for the defendants—

*Mr. Robbins.* I haven't appeared here in that capacity.

*Mr. English.* Appears physically and very actively conferring with my friend, Mr. Faulks. I have no objection to it, but the appearance should be noted on the record.

Q Do you know whether or not, Mr. Clark, this contract of June 3, 1909, to a copy of which I have directed your attention, was in fact executed by the New York, New Haven & Hartford Railroad Company, by its then President, Mr. C. S. Mellen; by the New England Navigation Company, by its then Vice-President, H. M. Kochersperger, and by John L. Billard and the Second National Bank of New Haven, the execution on the part of the bank being by Samuel Hemingway, its president?

*Mr. English.* I object to that as immaterial and improper, and because the wit-

ness is shown a printed copy and not the original.

Q The contract was executed on or about the date that I have mentioned? A Yes.

*Mr. Faulks.* I ask to have that marked for identification.

(Copy of contract referred to marked Exhibit D. 12 for identification.)

Q (*By Mr. Ward.*) I suppose your duties and authorities as secretary are set forth in the by-laws of the Railroad company? A Yes, sir.

*Re-direct* by Mr. English.

Q Mr. Clark, how is it that when you are shown a book by me, namely, Exhibit C. 168 for identification, and Exhibit C. 171 for identification, which are the records of the proceedings at Washington, you have no recollection, and when you are shown the same book by Mr. Faulks, you have a very active recollection of the contents of the matter to which your mind is directed? A I can explain that, Mr. English, by saying that I have had more to do with that contract than I ever did with the memoranda, and that is the reason that I remember it.

Q I am not referring particularly to the contract, I am thinking more particularly of the resolution which appears in your testimony at page 157, and which is right under a previous resolution to which I directed your attention, and about which you had no recollection; how can you remember the one resolution and not the other? A The same answer.

*Mr. English.* I will call Miss Lillian W. Gleue.

*Witness.* I appear in answer to a subpoena, but I object to testifying.

*Mr. Norman S. Buckingham* (of the Connecticut Bar.) I make the same objection to the testimony of this witness that Mr. Spock made to the testimony of Mr. Clark.

*Mr. Faulks.* Do I understand that my objection stands to all the testimony of these witnesses?

*Mr. Ward.* And mine.

*Mr. English.* Yes.

LILLIAN W. GLEUE, being duly sworn according to law, in behalf of complainants, testifies as follows:

*Direct examination* by Mr. English.

Q Are you a stenographer? A I am.

Q And you are employed in Mr. Clark's office? A Yes, I am.

Q He is the secretary of the New York, New Haven & Hartford Railroad Company—the last witness? A Yes.

Q How long have you been employed in that office? A Since March, 1905.

Q Are you in the habit of attending the meetings of the executive committee of the board? A No, sir.

Q Is Mr. Clark in the habit of dictating memoranda to you after returning from any of those meetings? A Yes, sir, he is.

Q Do you have custody of any of the papers pertaining to the records of the New Haven Railroad? A No, I do not.

Q Who keeps these rough memoranda which are dictated? A They are kept in our file in charge of the file clerk.

Q You have access to that file, I assume? A Yes.

Q Did you last June make any search for any papers at Mr. Clark's request or suggestion, relating to the proceedings then pending in Washington before the Interstate Commerce Commission, with reference to the financial affairs of the New York, New Haven & Hartford Railroad Company? A I don't recollect.

Q Substantially do you remember having searched for or seen a memorandum made by Mr. Mellen, the former president of the New Haven Railroad, with reference to the Billard transaction? A I remember looking for a memorandum; I do not recall whether that was in June or not.

Q Do you remember when it was you made the search? A No, I do not.

Q You found the memorandum? A I did.

Q And do you remember that there was on it a pencil notation made by you to the effect that Mr. Mellen read that memoranda or memorandum to the members of the executive committee on July 25, 1913, and that it was understood that the paper should be filed with the secretary?

*Mr. Faulks.* Objected to as immaterial and incompetent.

*Mr. Ward.* I object also on the ground that the memorandum should be produced.

A I do.

Q And you yourself wrote that little notation, did you not? A Yes.

Q At the dictation of Mr. Clark, the secretary? A He directed me to write it.

Q After that memorandum came to light and was in your possession and you saw the notation, what did you do with it?

*Mr. Faulks.* Same objection, and further, that this all relates to matters occurring after the beginning of the suit.

*Mr. Ward.* Same objection.

A I don't remember what I did with it.

Q You gave it to Mr. Clark, didn't you? A I don't know.

Q You made a copy of it? A I don't remember.

Q You read it at the time? A Yes, I saw it and read it, but I don't remember what I did with it.

Q I want to show you a book which has been referred to in this proceeding this morning as Exhibit C. 171 for identification, and particularly pages 2022 and 2023, and I ask you whether that which appears on page 2023, under the caption "The Billard Transaction," is not a part of the memorandum which you have just been referring to, at the bottom of which you made the pencil notation at the direction of Mr. Clark, concerning which you testified?

*Mr. Faulks.* Same objection, and the further ground that it is not a proper way to prove any record or any paper.

*Mr. Ward.* Same objection.

A I don't remember what was in that memorandum; I made a little pencil notation at Mr. Clark's direction and attached it to it, but I don't remember what it was.

Q Do you remember the gist of it?

*Mr. Ward.* I object to that on the ground that it calls for an answer which would be too indefinite to be of much use.

*Mr. Faulks.* I join in the objection.

A Do I remember whether this is a part of it?

Q No, my question is whether you remember the gist of the memorandum upon which you made the pencil notation? A No.

Q Do you remember what it dealt with? A No, I don't remember that.

Q Do you remember whether it dealt with the Billard transaction? A I cannot say that.

Q Can you tell whether pages 2022 and 2023 contain the memorandum about which we have been talking?

*Mr. Ward.* Same objection.

A I cannot say that.

*Mr. Faulks.* No cross examination.

*Mr. Ward.* No cross examination.

*Mr. English.* I offer in evidence the original subpoena which was served on Miss Lillian W. Gleue.

*Mr. Faulks.* I make the same objection to this subpoena that I made with reference to the Clark subpoena.

(Subpoena marked Exhibit C. 172.)

"To Lillian W. Gleue,
Stenographer N. Y., N. H. & H. R. R. Co.
GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to appear before me, a Judge of the Court of Common Pleas, within and for the County of New Haven, on Monday, the 14th day of June, 1915, at 10 o'clock in the forenoon, at my office, Room No. 904, Chamber of Commerce Building, No. 185 Church Street, New Haven, Connecticut, then and

there to testify, and give your deposition as to what you know in a certain cause wherein Jennie R. Morse, et al, are complainants, and The Metropolitan Steamship Company et al., are defendants, pending in Chancery of New Jersey.

Fail not, etc.

Dated at New Haven, this 1st day of June, 1915.

To any proper officer or indifferent person to serve and return.

Earnest C. Simpson,
Judge of the Court of Common Pleas for New Haven County.

State of Connecticut, } ss.
County of New Haven, }

New Haven, June 2, 1915.

Then and there I made service of the within subpoena by reading the same in the hearing of the within named witness, and by placing in her hands a true and attested copy hereof, and I paid to her the lawful fee.

| | | | |
|---|---|---|---|
| Fees: | travel | .40 | Attest, |
| | reading | .12 | John W. Hutt, |
| | copy | .12 | Deputy Sheriff. |
| | endorsement | .24 | |
| | | $ .88 | |
| | paid witness | .60 | |
| | | $1.48 | |

*Mr. Faulks.* It is stipulated and agreed by counsel, without waiving any of our objections, that the transcript of the deposi-

tions need not be certified and signed by Honorable Earnest C. Simpson, Judge of the Court of Common Pleas for New Haven County, as commissioner, but may be written out by Mr. Bindseil and filed with the Court of Chancery of New Jersey, and have the same force and effect as if the same had been returned under the hand and seal of Judge Simpson.

PAUL V. COLETTI, sworn for complainant.

*Direct examination* by Mr. McCarter.

Q What is your business, Mr. Coletti? A Insurance broker.

Q How long have you carried on that business? A I have been an insurance broker since the first of January; I have been employed there since 1904, ten years.

Q With what concern? A E. Coletti & Co., my father.

Q Were you in any way interested in the Chilmark Company? A No, sir.

Q I think you acted on one occasion as an inspector of election? A I don't believe I ever acted as one.

Q You put some accent on the word "acted" there? A I was asked if I would act as an inspector of election, and I believe my name was put down at that time; I never acted as one.

Q Did you say you would? A I did.

Q But, so far as you now recall, you did nothing more than consent? A That is all I ever did.

Q You know Miss Viola Thompson? A She was employed at the office there.

Q And she was the other one that acted? A I believe so.

Q Did she act? A I don't know as anybody acted; she was asked at the same time that I was.

Q You both said— A "Yes."

Q Who asked you? A Mr. Nicholson.

Q Was he connected with your office? A We had space in the office there at the time, in his office, and carried on our business in his office there; we had desk room.

Q And was Miss Viola Thompson connected with your office or Mr. Nicholson's office? A No, she was Mr. Nicholson's stenographer, I believe.

Q And you having desk room in Mr. Nicholson's office were asked on one occasion to act as an inspector of election of the Chilmark Company? A That is right.

Q You nodded your head in assent and that is all you know about it? A That is all.

Q When was that? A About four or five years ago; I am not sure of the date.

Q Did you sign some report? A I don't believe so.

Q Do you know what the Chilmark Company was? A No, sir.

Q Are you still associated with Mr. Nicholson? A Never was associated with him.

Q You still have your desk room there? A No, we left there some two years ago, I guess.

Q Where was this meeting held that you were supposed to be an inspector of? A I never knew there was a meeting held; I was asked to act as an inspector and that is as far as it ever went, as far as I knew.

Q Let us get the facts. Were you present when you were elected an inspector? A No, sir, I was not.

Q Mr. Nicholson informed you that you had been elected or requested you to act? A He came out and asked me if I would act as an inspector of election at a meeting of this company; I told him "yes."

Q A meeting that was then in operation? A No, he didn't say whether it was or was to be; he simply asked me and I think I said "Yes," and I think I signed something.

Q The same day? A At the time; maybe not, maybe I didn't sign anything; I was in the habit of occasionally witnessing things and I don't remember whether I signed anything or not.

Q Did Miss Thompson sit right near you in the office? A She was in that room; I don't recall what she did.

Q Did you hear her requested by Mr. Nicholson at the same time to act as an inspector? A I don't recall; I remember something about her being another inspector the same as I was; that is all I know.

Q Was there a meeting going on in another room at the same time? A Not that I know of.

Q When was it you signed anything, if you did sign anything? A That is it, perhaps I didn't sign anything.

Q Assuming you did? A I don't think I did.

Q Did you take an oath? A No.

Q To act as an inspector? A No, I did not.

Q Have you had your attention called to this matter until I asked you about it recently? A When I got the subpoena I didn't quite know what it was, because, as I say, I had been in the habit of occasionally witnessing papers and I thought it was something in connection with Mr. Nichclson, and I asked him what he imagined it

was, and he said it was probably the Chilmark Company that I had acted as an inspector of.

Q Had you ever heard of the Chilmark Company before? A I heard it spoken of in the office, but I didn't pay any attention to what it was.

Q When was it you called on Mr. Nicholson about it? Lately? A Last Saturday; I got the subpoena in the morning and went there in the afternoon.

Q What was there about the subpoena that made you think of Mr. Nicholson? A I had heard the Metropolitan Steamship Company spoken of in the office when I was there and I connected it with him.

Q What did you hear in regard to the Metropolitan Steamship Company in the office there? A I just remember hearing the name spoken of and remember hearing Metropolitan Steamship Line; I don't recall anything that went on; we never had anything to do with the other end of the office.

Q You also knew of the existence of the Chilmark Company? A I heard it spoken of, that is all.

Q Who did you hear speak of that? A Mr. Nicholson; he came in and told me it was the Chilmark Company, would I act as an inspector of election.

Q You heard it spoken of before that? A I may have occasionally.

Q Did you know Mr. Robbins? A No, sir.

Q Ever see him? A I don't know him.

Q Ever see him there? A No, sir, I don't know him.

Q Was he accustomed to come there? A I don't know anybody by the name of Robbins.

Q That might be true and yet he might come there; you might not know Mr. McCarter, and yet he might come to the office. A I wouldn't know it.

Q If any such man came there, you were unaware of it? A That is right.

Q Do you know Warren D. Chase? A I think I recall hearing the name; I don't know him.

Q You heard of him? A I have heard of him.

Q While you were around that office? A Yes.

Q Where did he belong? A I haven't the least idea; I believe he came in there occasionally; I heard the name perhaps announced as he came in.

*Cross examination* by Mr. Faulks.

Q Your father, as I understand, at the time that you were asked if you would act as an inspector of election of the Chilmark Company, had desk room in Mr. Nicholson's office? A Yes.

Q And you were engaged in business with him there? A That is right.

Q And that business was the insurance brokerage business? A Yes.

Q And on one occasion Mr. Nicholson asked you if you would act as an inspector of election of a meeting of the Chilmark Company? A Yes.

Q And you said you would? A Yes, sir.

Q And that was all that was ever done about it? A That is all, to my recollection.

OLIVER I. PILAT, sworn for complainant.

*Direct examination* by Mr. Brown.

Q Where do you reside? A New York City.

Q You do not reside in the State of New Jersey? A No.

*Oliver I. Pilat, direct.*

Q What is your business? A Assistant cashier National Bank of Commerce.

Q That bank is located in the City of New York? A Yes, sir.

Q How long have you held that position? A Ten years.

Q Is that bank a member of the New York Clearing House? A It is.

Q And as such does business through the New York Clearing House with the Bank of Manhattan Company, does it not? A Yes.

Q Are you familiar with the method of doing business through the Clearing House? A Only in a general way; my duties do not bring me in direct contact with that branch of the business.

Q Can you tell us how checks deposited in one bank, drawn on another bank, are collected through the Clearing House?

*Mr. Faulks.* May we have it understood that the same objection as to irrelevancy, immateriality and incompetency applies to the testimony of this witness.

*Mr. Ward.* And the same objection on the part of the defendant Pacific Navigation Company.

*Mr. English.* Yes.

A I think Mr. Reed explained it as good as I could; I listened to Mr. Reed's testimony.

Q If a check for the sum of $1,450,000 were deposited in the Bank of Manhattan Company on the fifth day of March by one of its depositors, and were drawn on your bank, how would it reach your bank for collection or payment? A In the ordinary course of business it would be sent to the Clearing House, and if the check took the ordinary course, it would reach the Clearing House on the Monday following; you say Sunday intervened there?

Q Yes. A I haven't looked up the calendar, I will take your word for that; and such checks drawn on us would be enclosed in a package and charged to us.

Q And accompanying the checks received by the National Bank of Commerce from the Bank of Manhattan Company would be a list on which the amounts of the various checks would be entered, would there not? A I would like to explain that a little; very often the contents of the package would be listed on a separate list, and then the total of that particular list would be carried to the list on the outside of the package, rather than individual checks themselves. There may be separate packages of checks within the package; they wouldn't make one list for every check; it would make a very long list, but the outside list would include the total in the package.

Q But inside would be a list from each bank that had checks drawn on your bank, containing a separate list of the checks in favor of that bank against your bank, would there not? A Usually, though sometimes a separate check is listed on the outside sheet.

Q But it is either on the inside or outside? A Yes.

Q And sometimes on both the inside and outside? A No, the separate checks would not be listed inside. If there was, say, one check, it might only be listed in one place, and probably be listed only on the outside sheet.

Q Have you a list of checks that were received by the National Bank of Commerce from the Bank of Manhattan Company through the New York Clearing House on the seventh day of March, 1910? A I have.

Q Will you produce that list? A Surely. (Producing same.)

Q Is this the only list which came with the package? A No, sir. (Producing additional papers.)

Q One of these lists is dated March 5, 1910, No. 23; what does that mean? A That is the list that accompanied the checks that were drawn on us on the clearings of the seventh.

Q Is No. 23 the Clearing House number of the Bank of Manhattan? A No.

Q On one of these lists, headed No. 23, dated March 5, 1910, National Bank of Commerce from No. 2 Manhattan Company, appears an item $1,500,000; does that sum of $1,500,000 represent one check? A I believe it does.

Q How do you know it does? A I don't know it does; I didn't see the check.

Q Do all the checks on this list represent separate checks, or are they the aggregate sums of checks? A Some of them are separate checks, presumably.

*Mr. Faulks.* Does the witness know anything about the matter?

*Witness.* I don't know personally anything about the particular checks that accompanied that package.

Q (*By Mr. English.*) Who does know? A I don't know if anybody does.

Q Does anyone in your bank know? A Here is a clerk with me who is more familiar with that part of the business.

Q What is his name? A Mr. Szymanski from our bank.

*Albert E. Fuechsel, direct.*

*Mr. Faulks.* We have no objection to your calling a clerk or anybody else who knows about it.

*Mr. Ward.* We have no objection.

ALBERT E. FUECHSEL, sworn for complainant.

*Direct examination* by Mr. English.

*Mr. English.* This witness is not named in the notice under which the testimony is taken, but by consent of counsel he is sworn in the case, with the same force and effect as if he had been named in the notice.

Q Where do you live? A New York City.

Q Are you a resident of New Jersey? A No, sir.

Q What is your business? A Connected with the Farmers Loan & Trust Company.

Q What is your business in that company? A Bookkeeper.

Q At our request, have you made a transcript of the account of the New York, New Haven & Hartford Railroad Company as it stands on the books of the Farmers Loan & Trust Company? A Yes.

Q Between the dates of February 2, and March 31, 1910? A I have.

Q Does this paper which I hold in my hand, and which you produced, contain a true transcript of that account? A It does.

Q You made that from your books? A The ledger of the Farmers Loan & Trust Company, the ledger L to O.

Q That included N, New York, New Haven & Hartford Railroad Company? A Yes.

Q And this is the ledger account as shown between those dates of the New York, New Haven & Hartford Railroad Company? A Yes.

Q Showing that that Railroad company was a depositor in your bank? A Yes, sir.

Q This paper which I show you has two columns; which is the credit and which is the debit column? A The left hand side is the debits, the opposite side the credits.

Q Then the credit column shows the money which they have deposited and been credited with in the Farmers Loan & Trust Company? A Yes.

Q And the left hand debit column shows the amount drawn out of that account? A Yes, sir.

*Mr. English.* I offer in evidence the statement, to which I understand there is no objection, as to the form of proof.

*Mr. Faulks.* We make no objection on the ground that this is a transcript from the ledger, but we do object to its receipt in evidence upon the ground that it and its contents are irrelevant, immaterial and incompetent under any issue in this proceeding.

(Marked Exhibit C. 100.)

Q This left hand or debit column has opposite the various dates in the margin a specific amount; does that represent one check or the aggregate of checks on that date? A It represents the aggregate of those two checks.

Q You set off still to the left of that column the amount of the checks which make up the total of the— A Total paid on that date.

Q As set forth in the debit column? A Yes.

Q Then except as there are to the left of the debit column figures, the figures set up in the debit column represent each one check? A Yes.

Q So that starting at the top on February 2, there was drawn out $4,067.17, and to the left of that you have two sets of figures which aggregate that amount? A Yes.

Q That means that there were two checks drawn which aggregated that $4,067.17? A Yes.

Q That is true all the way down? A Yes.

Q That same system applies? A Yes.

Q I see on this statement, under date of February 28, to balance $2,369,057.14, and under that, between two red lines the figures $5,439,-557.10, which correspond with a similar set of figures between two red lines on the credit side of the column? A Yes.

Q What is the explanation of the similarity of those figures? A To balance the account.

Q So that if you take the total amount of debits, plus the balance on the left hand column, it corresponds to the total amount of credits on the right hand column? A That is correct.

Q And reaches the same set of figures? A Yes.

*Mr. Faulks.* Just the usual way of balancing the account, is it not?

A Yes, sir, that is the usual way.

Q That is true of the two specific balances which appear on this statement? A That is correct.

Q (*By Mr. Ward.*) Did you make the entries on the ledger of which these are a transcript? A No, sir.

ALBERT E. FEUCHSEL, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A New York City.

Q Are you a resident of the State of New Jersey? A No, sir.

Q And you are connected with the Farmers Loan & Trust Company of this city? A Yes, sir.

Q In response to a subpoena, have you produced a transcript of the account of the Billard Company with the Farmers Loan & Trust Company? A Yes, sir, for a certain period.

Q You produce it for a period around the early part of March, 1910? A Yes.

Q Between what dates? A Between March 4 and March 31.

Q What is this paper which you produce? A A transcript of the ledger account.

Q Do you know by whom this transcript was made? A It was made by me.

Q From what ledger or ledgers? A A to B.

Q From general ledger? A No, deposit ledger A to B of the Farmers Loan & Trust Company.

Q And this paper which you produce is a true copy of the entries from March 4 to March 31, 1910, made personally by you from that ledger, is that correct? A Yes, sir.

*Mr. English.* I offer the transcript in evidence and I understand from counsel that it is to be received with the same force and effect as the original books, subject to their objections.

*Mr. Ward.* I object to the offer on the ground of incompetency, immateriality and irrelevancy, and because the books of account of the Farmers Loan & Trust Company are not evidential against the Pacific Navigation Company, and because their contents relate to *res inter alios.*

*Mr. Faulks.* I make the same objection on behalf of the defendants whom we represent.

(Marked Exhibit C. 119.)

Dr. The Billard Company in account with THE FARMERS' LOAN AND TRUST COMPANY, Cr.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1910 | | | 1,550,000 | | 1910 | | |
| Mch. 5 | To Cash | | 200,000 | 1,750,000 | Mch. 4 | By Cash | 60,000. |
| " | " | " | | 1,500,000 | 5 | do. Proceeds of Loan | 1,700,000. |
| 31 | " | Balance | | 60,000 | " | do. | 1,550,000. |
| | | | | 3,310,000 | 1910 | | 3,310,000. |
| | | | | | Mch. 31 | By Balance | 60,000. |

Q Have you also, at our request, or in response to our subpoena, produced a transcript of the loan account of The Billard Company with The Farmers Loan and Trust Company? A No, sir, that is just one particular loan.

Q You produce a transcript of a loan which was entered up on March 5, 1910? A Yes, sir.

Q Was this paper which you produce made by you? A No, sir.

Q By whom was it made? A Mr. J. C. Talley.

Q Are you familiar with his writing? A Yes, sir.

Q And do you know as a fact that that was made from the original books? A Yes, sir.

Q What is the book from which this transcript was taken; what do you call it? A Loan ledger.

Q And this paper which you now produce, and which refers to a loan of $1,700,000, refers to the same loan which was credited in the ledger represented here by Exhibit C. 119, under date of March 5, from proceeds of loan, $1,700,000? A Yes, sir.

*Mr. English.* I offer in evidence the transcript from the loan ledger, with the like understanding as to formal proof.

*Mr. Faulks.* I make the same objection as I did to the paper last previously offered in evidence.

*Mr. Ward.* Same objection as to Exhibit C. 119.

(Paper offered in evidence and marked Exhibit C. 120.)

Dr. The Billard Co. in account with
THE FARMERS' LOAN AND TRUST COMPANY, Cr.

1910
Mch. 5 To Loan $1,700,000
——— Collateral ———
$3,000,000 New England Investment and Security Co. 3-4-5% Gold Notes due 1924.

Q I see that this Exhibit C. 120, which is the transcript from the loan ledger, refers to certain collateral which was deposited; was that handled by you personally? A No, sir.

Q Who in your company attends to matters of that character? A Mr. Talley.

Q The same man you mentioned before? A Yes, sir.

Q And do you know whether he handled this particular transaction? A I do not.

Q If he didn't, who would be likely to? A Mr. Hart or Mr. Sammis.

Q What is Mr. Sammis' name? A H. D. Sammis.

Q What is his official position in the company? A Assistant cashier in both cases.

Q Each is an assistant cashier? A Yes, sir.

Q Do you know Mr. Talley's full name? A J. C.

Q Do you know where either of these gentlemen live? A Mr. Sammis lives in Flatbush, Long Island, and Mr. Talley, in Yonkers, New York.

Q We have subpoenaed you to produce the deposit slip of the Billard Company; have you got it? A Yes, sir. (Producing paper.)

Q You produce a deposit slip dated March 5, 1910, reading "Proceeds of Loan $1,700,000;" that is correct? A Yes, sir.

Q And that is the same loan which is referred to in this Exhibit C. 120? A It is.

Q And also referred to in Exhibit C. 119? A Yes, sir.

Q Through whose department did this deposit slip go? A That originated in the loan department and went to the receiving tellers.

Q In the loan department is either Mr. Sammis or Mr. Talley? A Yes.

Q Who is the receiving teller who would receive this? A I don't know who it was at that time; I imagine at that time Mr. S. R. Craig.

Q Is he still in the Trust company? A Yes, sir.

Q Do you know where he lives? A In Dunellen, New Jersey.

Q This paper which you call a deposit slip, is a certified credit memorandum, isn't it? A Yes.

Q Crediting the Billard account with the proceeds of this loan? A Yes.

*Mr. Faulks.* That is just an internal transaction of the bank?

*Witness.* Yes.

*Mr. English.* I offer this paper in evidence, with the like understanding of counsel as to the form of proof.

*Mr. Ward.* We make the same objection as we made to Exhibits C. 119 and C. 120.

*Mr. Faulks.* Same objection.

(Paper referred to marked Exhibit C. 121.)

CREDIT March 5, 1910

Trust Department.

Account of The Billard Co.
Proceeds of Loan, $1,700,000.
JCT.
Voucher No.....

Q So that the procedure in this particular $1,700,000 loan was, instead of depositing a check, the Trust company loaned them that sum on this collateral which is mentioned in this Exhibit C. 20; then they wrote that up in their book as a credit; that is correct? A Yes, sir.

Q That is what these papers indicate? A Yes, sir.

Q You have also produced in response to our subpoena, what apparently is a straight slip, showing that $1,550,000 was deposited by the Billard company on March 5, 1910; that is correct? A Yes, sir.

Q And from whose department did you get that slip? A That is an original deposit taken in by the receiving teller.

Q Mr. Craig? A Yes, sir.

*Mr. English.* I offer that deposit slip in evidence.

*Mr. Ward.* Same objection.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 122.)

DEPOSITED BY
The Billard Co.
in
THE FARMERS' LOAN AND TRUST CO.
New York, Mar 5-1910

| | Dollars | Cents |
|---|---|---|
| Bills | | |
| Specie | | |
| Checks | 1,550,000 | |

Q And the entry in the individual ledger A-B, represented here by the transcript C. 119, under date of March 5, by cash $1,550,000, refers to this same deposit slip? A Yes.

Q That is, the books would show that? A Yes.

Q You also produce in response to our subpoena a deposit slip showing that on March 4, 1910, the Billard company deposited $60,000; that is correct? A Yes, sir.

Q And that went through the same teller's department? A Yes, sir.

Q Do you know in whose handwriting this particular slip is? A Mr. Craig's.

Q And these words down at the bottom "particulars later," are in his handwriting also? A Yes, sir.

*Mr. English.* I offer in evidence this deposit slip for $60,000.

*Mr. Ward.* Same objection.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 123.)

DEPOSITED BY
The Billard Company
in
THE FARMERS' LOAN AND TRUST CO.
New York, Mar 4-1910

| | Dollars | Cents |
|---|---|---|
| Bills | | |
| Specie | 60,000 | |
| Checks | | |
| A/B | | |
| 2 1/2% | | |
| particulars later | | |

Q This deposit slip for $60,000, dated March 4, refers to the deposit which you credited on the individual ledger C. 119 under the same date for $60,000? A Yes.

Q I notice that the entry was by cash? A Yes.

Q On this deposit slip the figures "60,000" are written after the word "Specie?" A I don't think it is meant to be specie, it is probably checks.

Q Do you know as a matter of fact whether this $60,000 was specie or check? A No, I do not.

Q Do you know as a matter of fact whether the deposit for $1,550,000, represented by Exhibit C. 122, was specie or check? A It was a check.

Q Do you know on what bank it was drawn? A National Bank of Commerce.

Q Of New York? A Yes, sir.

Q Do you know the date of the check? A No, sir.

Q It was deposited with your bank on March 5? A Yes, sir.

Q Do you know whether or not the check was certified? A Yes, sir.

Q It was certified? A Yes, sir.

Q By the National Bank of Commerce? A Yes, sir.

Q Do you know who is the maker of this check? A No, sir.

Q Referring to Exhibit C. 119, I notice that on March 5 the Billard company were charged with a draft of $1,550,000; that is correct? A Yes, sir.

Q Have you produced the check which represents that draft? A Yes, sir, I have.

Q This is the check? A Yes, sir.

Q A check which is a cashier's check of the Farmers Loan & Trust Company? A Farmers Loan & Trust Company's check.

Q Dated March 5, 1910, to the order of Edward T. Canfield? A Yes.

Q And drawn on what bank? A National City Bank.

Q And this is the original check which has come back to your bank after having been deposited? A Yes, sir.

Q It appears it has been paid, from the check itself? A Yes.

*Mr. English.* I offer in evidence that check, dated March 5, 1910.

*Mr. Ward.* Same objection.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 124.)

(Exhibit C. 124)

"THE FARMERS' LOAN AND TRUST COMPANY.

No. 469823 New York, Mar 5 1910

The National City Bank
Through Clearing House

Pay to the order of Edward T. Canfield
One Million Five Hundred and Fifty Thousand Dollars $1,550,000 00/100

C. R. Agnew, Vice Pres.
J. C. Talley, Asst. Cashier."

ENDORSED:

"Pay to the order of the
National Bank of Commerce
Edward T. Canfield"

"Received payment
Through the New York Clearing House
Mar 5 1910
3rd Teller
Endorsement Guaranteed
National Bank of Commerce in New York"

Q We subpoenaed you to reproduce the check book showing the stub from which this check was drawn; did you produce it, or a transcript of it? A Yes.

Q You produce a transcript? A Yes.

Q Made by whom? A By me.

Q From the original check stub? A Yes.

Q And this paper which is headed "Memoranda" contains a true copy of the check stub? A Yes.

*Mr. English.* I offer that in evidence, with the same understanding as before as to the character of the formal proof.

*Mr. Ward.* Same objection.

*Mr. Faulks.* This is a transcript of the stub of the Farmers' Loan & Trust Company book from which this check was drawn?

*Witness.* Yes, sir.

(Marked Exhibit C. 125.)

"March 5, 1910.
Ck #469823
Order of E. T. Canfield
Chgd a/c Billard Co.
$1,550,000."

Q Does this copy of the check stub, Exhibit C. 125, show to whom this check signed by the officers of the Trust company was charged? A Yes, sir.

*Mr. Faulks.* It speaks for itself; he wouldn't know, except what that shows.

Q The check stub shows to whom it was charged? A Yes.

Q And this copy which you made indicates that? A Yes.

Q And does the endorsement on the back of the check show where the check was deposited? A Yes, sir.

Q And it came back to your bank from what bank, do you know? A National City Bank.

Q On which it was drawn? A Yes, sir.

Q I notice on this extract from the ledger, Exhibit C. 119, that on the same date on

which this check, Exhibit C. 124, was drawn out, another draft of $200,000 was made; do you know what that was represented by? A That was one of the Billard company's checks on us.

Q Do you know to whose order that check was drawn? A No, sir.

Q I see on the same date another draft is made from the same account, namely, for $1,500,000; do you know by whose check? A The same, the Billard company's check.

Q On your bank? A Yes.

Q Do you know to whose order that check was drawn? A No, sir.

Q Do you know whether either of those checks, namely, the $200,000 check or the $1,500,000 check, was certified? A No, sir, I do not.

Q I see a charge on the ledger, under date of March 31, "To balance $60,000;" that closed the account? A No, that is a memorandum of the balance, inserted to show the account balance as of March 31.

Q In other words, they took their bank balance on March 31? A No, it is a statement account; the statement was sent to them, showing that balance.

Q The statement was sent as of March 31, showing a balance of $60,000 left? A Yes, sir.

Q And this account was opened originally on March 4, 1910, by the $60,000 deposit, is that right? A Yes, sir.

Q Do you know how long the account remained open after March 31, 1910? A I believe the account is still open.

Q You said that this represented one of the accounts of the Billard company; were there other accounts of the Billard company; A I don't remember that I said that.

*Albert E. Fuechsel, cross.*

Q As a matter of fact, are there other accounts, or were there other accounts on the books of the bank? A It is the only one I know of.

Q What is your position in the bank? A Bookkeeper.

Q Do you meet customers personally? A Yes.

Q Did you meet this Mr. Canfield who drew this check Exhibit C. 124,—to whose order it was drawn? A No, sir.

Q Did you meet Mr. Billard in connection with any of these transactions which these papers refer to? A No, sir.

Q Did you have any personal knowledge of the making of this loan and the depositing of these moneys at the time they were done? A No, sir.

Q Did you meet anybody in connection with it at the time? A No, sir.

Q That was all handled by either Mr. Sammis or Mr. Talley in the cashier's department? A Yes, sir.

*Cross examination* by Mr. Faulks.

Q Not intending to question the form of this proof, Mr. English, I nevertheless want to know whether the witness has any personal information as to these matters with reference to which he testified, or whether his testimony is simply as to what the records of the bank show. A It is only the latter. It is what the records of the bank show.

Q You have no personal knowledge at all? A No.

*J. Courtey Talley, direct.*

*Re-direct* by Mr. English.

Q Do you keep any of the books from which these transcripts were made? A I believe I was on the A-B ledger at the time these transactions went through.

Q Which is represented by the transaction Exhibit C. 119? A Yes.

Q You made those copies from your own handwriting in that book? A Yes, sir.

Q That is the only one, as you remember? A Yes, sir.

J. COURTNEY TALLEY, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A 38 Elinor Place, Yonkers, New York.

Q You do not live in the State of New Jersey? A No.

Q What is your connection with the Farmers Loan & Trust Company? A Assistant cashier.

Q And you have been how long? A Six years.

Q You were such in March of 1910? A Yes, sir.

Q I show you here a transcript of account of the Billard Company with the Farmers Loan & Trust Company; do you know whether that is a correct account of the books of the Trust company? A I compared it with the ledger and found it a true transcript.

Q Showing the account of the Billard company? A From March 4, 1910, up-to-date.

*Mr. English.* I offer in evidence this transcript of the Billard company's account, and I understand there is no objection

to the form of proof in that the paper is a transcript of the original books?

*Mr. Faulks.* We make no objection on the ground just mentioned, and consent that the copy of the account may be used with the same force and effect as if the original were produced, but we do object to the reception of the evidence, on the ground that it is immaterial, irrelevant and incompetent.

*Mr. Ward.* Same objection.

(Billard Company Account marked Exhibit C. 130.)

Q Calling your attention to this Exhibit C. 130, the left hand side shows the deposits? A Debits.

Q What is the money drawn out? A Charges and money drawn out.

Q And the right hand side shows the money put in? A Yes, and so stated, debit and credit.

Q Looking at the debit side, money drawn out, the first item, March 5, 1910, "To Cash," is there anything from which you can see whether the money was drawn out by cash or by check? A No, sir, other than these two certifieds.

Q You point to the letter "c?" A The letter "c." Those two were certifieds; I have the records here to show; they are bound to have been checks; they couldn't certify cash.

Q Drawn by certified checks? A Checks presented to us and certified at the National City Bank.

Q And that applies to the check for $200,000 on March 5? A Yes.

Q And another check for $1,500,000 on March 5, 1910? A Yes, sir.

Q I notice on the credit side, on March 5, 1910, the Billard Company got $1,700,000 by the proceeds of a loan, A Yes, sir.

Q And on the same date their account was credited by cash to the amount of $1,550,000? A Yes, sir, that is correct.

*Mr. Faulks.* It is understood that our objection goes to this entire line of testimony, without being repeated?

*Mr. Ward.* I would like the same understanding.

*Mr. English.* Yes, sir.

Q How much was the balance to the credit of the Billard Company, according to this statement, on December 31, 1910? A $3,595.96.

Q I notice that on March 1, 1911, they were credited with $2,000,000? A Yes, sir.

Q Does it appear from this statement when the loan of $1,700,000, previously referred to, was paid off? A Does this statement show that?

Q Yes. A Not that I know of. I can probably find out from some records that I have.

Q What book do you refer to? A I refer to what we call our loan book.

Q An original book of the book? A Yes, sir, in which we made the Billard Company a loan on March 5, 1910, for $1,700,000, which was paid off March 4, 1911, and I have in the form of letters showing how that money was received.

Q Produce the letters, please. A Do you want the originals? I have copies also; there is where they sent us the money to pay the loan, in two checks, as mentioned there, and there is a copy of our reply to it. (Indicating letters.) (Witness produces two letters.)

Q This loan book, as you call it, shows the loan was made on March 4, 1911? A Yes.

Q And this transcript, Exhibit C. 130, shows that fact under the same date? A It gives the same figures.

Q Are you able to say whether that is the entry of the money which paid off the loan with the interest? A No.

*Mr. Faulks.* You have no personal knowledge of this account?

*Witness.* Only from these letters, it would appear so, but I don't know that that is so.

Q At any rate, the figures correspond, $17,000, the interest? A Yes.

Q And $1,700,000 principal of the loan? A Yes.

*Mr. English.* I offer in evidence the record in the loan book, to which the witness refers, found on page 57, and ask the Master to copy it right into the record.

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 131.)

1910
Mar 5 The Billard Co. 13543 4% Mar 4/11 to the
5th $3,000,000 due March 6 1911
Int paid to June 5 1910
Int paid to Sep 5 1910 Downstairs
Int paid to Dec 5 1910 New vault #316
New Eng Invest and Sec Co
3-4-5% Gold notes due 1924
Special papers $11,800

Q You have referred to some letters. I show you here an original letter from the Billard

Company, Samuel Hemingway, treasurer, to The Farmers Loan & Trust Company, dated March 1, 1911; is that one of the letters you referred to? A It is.

Q And a copy of a letter from your company, by A. V. Heely, vice-president, of the same date, in reply; is that the correspondence you referred to? A It is.

*Mr. English.* I offer in evidence the letter of the Billard Company to the Farmers Loan & Trust Co., above referred to.

*Mr. Ward.* Same objection.

*Mr. Faulks.* I object to the reception of this letter in evidence on the same grounds as we objected to the other testimony given by this witness. I have no objection to a copy being marked in place of the original, if that is desired.

(Copy of letter marked Exhibit C. 132.)

*Mr. English.* I also offer in evidence the copy of the letter of the Farmers Loan & Trust Company to the Billard Co., dated March 1, 1911.

*Mr. Ward.* Same objection.

*Mr. Faulks.* Same objection. I have no objection to substituting a copy of this letter.

(Marked Exhibit C. 133.)

Q Was any collateral given for this original loan of $1,700,000? A Yes, sir.

Q What did it consist of? A $3,000,000 New England and Securities Company 3-4-5% gold notes due 1924.

*Mr. Faulks.* You are reading from the loan book before referred to by you?

*Witness.* Yes, sir.

*Mr. Faulks.* You have no personal knowledge of it?

*Witness.* No, sir; I cannot say positively, but that is my recollection.

Q Did you handle the loan yourself? A Yes, sir, I took that loan in; it is all in my handwriting.

Q This entry in the loan book is in your handwriting? A Yes.

Q The fact that the entry is made in your handwriting shows you had it in your possession? A Yes, sir.

Q You are refreshing your recollection from your own memorandum? A Yes.

Q Can you tell us whether that collateral was returned back to the Billard company? A I have a receipt dated March 14, 1911, from The Billard Company, John L. Billard, president; Samuel Hemingway, treasurer—a receipt for these securities.

Q And those securities were given up following the paying off of the loan on March 4, 1911? A Yes, sir.

*Mr. English.* I offer in evidence the receipt showing the securities went back.

*Mr. Faulks.* We make the same objection, and consent that the copy be marked instead of the original.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 134.)

Q Is the New England Navigation Company a depositor in the Farmers Loan and Trust Company? A They are.

Q And was in 1911, in March?

*Mr. Faulks.* Same objection to this testimony, so far as it relates to the New England Navigation Company, as to the previous testimony.

A Yes, sir.

Q I show you what purports to be a transcript of the account of the New England Navigation Company with the Farmers Loan and Trust Company. Have you any knowledge of that transcript? A I compared it with the ledger and found it a true transcript.

Q Of the account between what dates? A Between February 28, 1911, and March 31, 1911.

*Mr. English.* I offer in evidence the account of The New England Navigation Company with the Farmers Loan and Trust Company, and understand there is no objection to the form of proof?

*Mr. Faulks.* We make no objection on the ground that this is a copy taken from the books of the Trust company, but do object to the reception of the evidence upon the ground that it immaterial, irrelevant and incompetent.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 135.)

Q I see by this transcript of the New England Navigation Company's account, Exhibit C. 135, that it had a balance on February 28, 1911, of $2,038,944.78; that is correct? A That is correct.

Q And on March 1, 1911, they drew out of that account how much? A $2,006,500.

Q Was that in one draft? A Three drafts, $2,500, $4,000, and $2,000,000.

*Mr. Faulks.* You are only undertaking to show what this transcript of the account shows on its face?

*Witness.* I am reading from the transcript of the ledger, Exhibit C. 135.

Q Do you know what was done with the draft of $2,000,000 in that account?

*Mr. Faulks.* Of his own knowledge or what the records show?

A I don't know what was done with it.

Q Apparently $2,000,000 was drawn out by check? A That is correct.

Q Do you know whether that same check was deposited in your Trust company to any other account? A I have no way of knowing it, other than a deposit ticket dated March 1, 1911, showing $2,000,000 deposited by the Billard Company, on which in pencil there is written a notation that it is a cross entry of the New England Navigation Company, meaning to us that it was a check drawn on our company by the New England Navigation Company.

Q And deposited in the account of the Billard Company? A Exactly.

*Mr. English.* I offer in evidence the deposit slip which the witness refers to.

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 136.)

DEPOSITED BY

The Billard Company 1775
in
The Farmers' Loan and Trust Co.
New York, March 1/1911

| | Dollars | Cents |
|---|---|---|
| Bills..... | | |
| Specie..... | | |
| Checks.X.....2,000,000 | | |
| (red pencil)New Eng Navigation Co. | | |

Q Is that little cross that you referred to a mark which is made in the usual course of business, when you have cross accounts, as you call it? A Yes, that means that it is a cross entry. In our bank we call it a cross entry. Any check which a depositor deposits to his credit, being a check on ourselves, it is designated by a cross from one account to the other on our books.

Q Does the teller make that when he examines the check that is attached to the deposit slip? A Yes, sir, the receiving teller.

Q And that is the usual course of business? A Yes. I don't know whether it is at the present time, but it was at that time.

Q You know that from your familiarity with the affairs of the bank? A Yes, sir.

*Mr. Faulks.* You have no knowledge of this particular transaction?

*Witness.* No, sir.

*Mr. Faulks.* You are simply testifying from the records?

*Witness.* Yes; of my own knowledge, I don't know anything.

Q Who was the receiving teller who received that particular deposit? A I am informed that that is the handwriting of S. R. Craig, who is at present receiving teller.

Q And he was at that time? A Yes, sir.

Q I want to go back a moment to the check for $1,500,000, which was drawn out by the Billard Company on March 5, 1910, as appears on Exhibit C. 130, and I ask you what book is now before you? A This is a book called certified checks No. 16.

Q Has that an entry of this particular check I am talking about? A It has an entry of that amount, the Billard Company $1.500,000, on March 5, 1910.

Q And corresponds with the same entry on Exhibit C. 130? A Yes, sir; being no others of that amount here for the Billard Company, that is the one.

Q That is the only one for the Billard Company of that date? A No, there were other checks.

Q Except the $200,000? A Yes.

*Mr. Faulks.* That is, the record before you now shows that on March 5, 1910, the Billard Company had certified two checks, one for $200,000 and one for $1,500,000?

*Witness.* It does not show necessarily that the Billard Company, but it shows that it was presented for certification; by whom, I don't know.

Q It was charged to the Billard Company? A Yes, the Billard Company's check on us, and we certified it as good, being payable at the National City Bank.

Q What is your practice in the certification of checks; do you stamp it certified or accept it payable on some bank? A We accept it payable on the National City Bank.

Q All of your certified checks? A Yes.

Q Was this $1,500,000 check accepted in that way? A It was.

Q Can you tell us from this record before you, when it was returned to you? A Yes, sir, I can; March 7, 1910.

Q That came back through the Clearing House? A It comes back through what we call the "exchanges." We being not a Clearing House institution, the City Bank returns to us all the certifieds and we give them our one check for the whole business.

Q The calendar shows that March 6, 1910, was Sunday, so March 5th, the date the check was certified, was Saturday; what date would you say the check was deposited? A If March 5th was Saturday, the check was returned to us on Monday.

Q And that shows the check was deposited on what date? A It means it was presented to us for certification on March 5th.

Q It was paid and returned through the National City Bank? A Yes, on the 7th.

Q They returned it the next business day? A Yes.

Q Do they return the checks the same day they are accepted by them? A They are supposed to, but there might be some reason or other that they might possibly be held over a day. They would do it in the ordinary course of business—return them the very next business day after they are presented; they want the money.

Q So, assuming the ordinary course of business was pursued here, the check was accepted Saturday and returned the following Monday? A Yes, sir.

*By Mr. Faulks.*

Q I say, in the case of a check of that size, would it be the unusual thing for the National City Bank to return it on the very day that it was accepted by it? A That is done sometimes on the very day.

Q So, you cannot say from anything that appears on the record before you, whether the check was accepted on March 5th or March 7th? A I can say it was accepted on March 5, 1910; our records show that.

Q You cannot tell when it was deposited? A Yes, sir, by the date on which we paid it, on March 7th, by the red stamp on the outside.

Q You cannot tell when the check was used? A No; I can tell when we certified it and when it was returned to us.

Q It was certified by you on the 5th and returned to you on the 7th, and that is all you can tell from that book? A Yes.

Q There is nothing in the usual course of business or anything else, as I understand you, now, that will enable you to say that the check was used on the 5th or 7th? A No; it is possible for them to have held it out until the morning of the 7th and presented it to the institution and then came to us.

*By Mr. English.*

Q But that is not probable? A No.

Q You have pointed out a $200,000 check here, also certified on March 5th, 1910, to the

Billard Company; when did that come back? A March 7th, 1910.

*Mr. English.* I offer in evidence so much of the certified check book No. 16, to which the witness has referred, as contains these two entries relating to the two checks of the Billard Company for $200,000 and $1,500,000, respectively.

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 137.)

| No. | | amount | returned |
|---|---|---|---|
| 10 | Billard Co. The | 200,000 | Mar 7 1910 |
| 20 | Billard The Co. | 1,500,000 | Mar 7, 1910 |

EDWIN S. MARSTON, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A At present in New Jersey; my legal residence is New York.

Q You are summering in New Jersey? A Yes.

Q When do you expect to leave New Jersey? A Probably next month.

Q In October? A Yes; maybe later, I don't know; I haven't decided about that.

Q Will you be subject to subpoena in New Jersey in October? A I don't know.

Q You are a legal resident of New York? A Yes.

*Mr. Faulks.* I would like to ask a question or two with reference to the same subject matter.

*Edwin S. Marston, direct.*

*Cross examination* by Mr. Faulks.

Q You are residing in New Jersey at this time? A Yes.

Q Whereabouts in New Jersey? A Florham Park.

Q You have made no plans to move back to New York before the fifth of October, have you? A No, I haven't, but I may be in New York before that.

*Mr. Faulks.* We object to the examination of Mr. Marston under this notice, on the ground that it now appears that he is at present residing in New Jersey, subject to a subpoena there, and has made no plans to leave the state between now and the time fixed for the hearing of this cause.

*Mr. Ward.* Same objection.

*Further direct* by Mr. English.

Q You always vote in New York, don't you? A When I vote.

Q And New York is your legal residence? A Yes.

Q You are the president, I think, of the Farmers Loan & Trust Company? A Yes.

Q And were you such in March, 1910? A Yes.

Q Have you any knowledge of a loan which was made by your company to The Billard Company on March 5, 1910, for $1,700,000. A I know that there was such a loan made; I didn't know it was March 5th.

Q I show you one of the books of your bank, produced here in response to our subpoena, which is entitled "Loans other than brokers, No. 1," and call your attention to page 57 of that

book, from which it appears that the loan was made on March 5, 1910. A I should accept that.

Q And this book is one of the books kept in the ordinary course of business in your Trust company? A Yes.

Q Did you personally have anything to do with the making of that loan? A I don't know anything about that.

Q When did you first become aware of the fact that the loan was made or was about to be made? A I cannot tell you.

Q Approximately at the time it was done? A It might or might not have been referred to me at the time, but I cannot say; I have no recollection of it now.

Q What is the custom in your bank with reference to loans of large sums of money like this, or was the custom at that time? Would an assistant cashier loan all this money on his own responsibility, or would he take it up with some higher officer? A Any officer could make the loan.

Q What was the practice? A I don't know that there is any practice; any one who wants a loan, comes in and asks for it; the person they would meet and ask for it would pass upon it, if there wasn't any question about it.

Q Wouldn't the matter come up before either the president or vice-president before a loan was ordinarily granted of this size? A Probably.

Q And that was probably true in this case? A I don't know anything about that; I have no recollection of what happened on March 5, 1910.

Q I am not asking you to fix any particular time; simply whether you have a recollection of a loan to the Billard Company? A It is very difficult to say that I had any idea of it at that time, or when I learned anything about it, because the question has been brought up recently and I have seen statements of it, showing that there was a loan to the Billard Company, but where or when I got my first knowledge of it, I cannot say.

Q Do you know John L. Billard? A Yes.

Q How long have you known him? A I cannot tell you; I don't know how long I have known him; I have no idea.

Q Do you think the date of your acquaintance goes back as far as March, 1910? A It must have been prior to that.

Q You knew him prior to that time? A Yes.

Q Do you know Mr. Samuel Hemingway? A Yes.

Q How long have you known him? A About the same time.

Q Can you recall whether you interviewed either Mr. Billard or Mr. Hemingway, or both of them, with reference to this loan?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

A No, I don't remember.

Q Do you ever remember an officer of the bank considering New England Investment & Securities Company notes as collateral for a loan to the Billard Company?

*Mr. Ward.* I object.

*Mr. Faulks.* Same objection.

A I don't know; it might have been, could have been.

Q What I am trying to find out, without prying into the business of your company, is simply whether you have any recollection of passing on collateral of that character for a loan to the Billard Company? A No, I told you before I had no recollection about the matter.

Q Have you any recollection of ever having seen Mr. Billard or Mr. Hemingway or either of them in your bank?

*Mr. Ward.* Objected to as immaterial and irrelevant.

*Mr. Faulks.* Same objection.

A Yes.

Q Can you tell us when you have that recollection, as of what date?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A I cannot fix any date; I know both of the men.

Q Do you know Mr. Edward D. Robbins, a lawyer of New Haven and connected with the New Haven Railroad? A Yes.

Q Have you ever met him in your Trust company?

*Mr. Faulks.* Objected to as irrelevant, immaterial and incompetent.

*Mr. Ward.* Same objection.

A Many times.

Q Have you any recollection of meeting him in connection with this loan?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A None whatever; it is easy enough to find out.

*Sidney R. Craig.*

Q How can you find out? A Ask him. What is the question about it, and I may tell you something.

*Mr. Ward.* I move to strike out Mr. Marston's testimony so far as it relates to the loan of March 5, 1910, because it appears that he has no personal recollection of it, and because the record laid before him is not a proper record to be used for the purpose of refreshing his memory.

*Mr. Faulks.* Same objection.

No Cross Examination.

It is stipulated and agreed by counsel for the respective parties that the original Exhibits C. 121, 122 and 123, may be returned by the Master to the Farmers' Loan & Trust Company, and the copies inserted in the record, used in lieu thereof.

It is stipulated and agreed that if Sidney R. Craig, named in the notice of the taking of depositions given for the eighteenth day of September, 1914, were called, he would testify as follows:—

"THE FARMERS' LOAN AND TRUST COMPANY,"
16, 18, 20 & 22 William Street,
New York.
September 23, 1914.

Nicholas W. Bindseil, Esq.,
Master in Chancery,
C/o Owen N. Brown, Esq.,
149 Broadway, New York, N. Y.

Dear Sir:—

*Morse* vs. *Metropolitan Steamship Company.*

I am now, and was on the first day of March, 1911, Receiving Teller of The Farm-

ers' Loan and Trust Company. I have examined the deposit slip of The Billard Company, dated March 1, 1911, which has been marked "Exhibit C. 136, Sep 18 1914 N. W. Bindseil." Upon this deposit slip, opposite the word "Checks," are written under the heading "DOLLARS" the figures "2000-000." Following the word "Checks" is a cross in pencil and below the word "Checks" in pencil are the abbreviations "New Eng Navigatn Co". This cross and the following words and abbreviations in pencil were written by me, and from this notation I am able to say that the check of two million dollars which was deposited with the said deposit slip was a check drawn upon The Farmers' Loan and Trust Company by the New England Navigation Company.

Yours very truly,

JDS (Signed) SIDNEY R. CRAIG."

And it is further stipulated that the foregoing shall have the same force and effect as if he had been produced, sworn and testified, over the objection of the defendants, and that all rights of the defendants to object to such testimony upon the grounds of irrelevancy, immateriality and incompetency, are fully reserved.

*Edwin K. Roche, direct.*

It is stipulated and agreed by counsel for the respective parties that Mr. Edwin K. Roche may be called as a witness on behalf of the complainant, in place of Alfred J. Oxenham, with the same force and effect as if his name had been included in the notice of taking depositions.

EDWIN K. ROCHE, sworn for complainant.

*Direct examination* by Mr. Brown.

Q Where do you reside? A County of Kings, Brooklyn.

Q What is your business? A Banking business.

Q With what bank? A National Bank of Commerce.

Q In the City of New York? A City of New York.

Q How long have you been connected with that bank? A Twenty years.

Q In what capacity? A For the last nine years I have been note teller there, and previous to that, in the different departments around the bank.

Q You started at the bottom and came up to the position of note teller? A Yes.

Q We have subpoenaed Mr. Oxenham of the National Bank of Commerce or certain of its officers to produce certain records. Have you produced certain records of the National Bank of Commerce? A Yes, sir, I have.

Q What are those records which you produce? A I have the record of two deposits made on March 5, 1910.

Q You have not produced the deposit slips? A No, I have not.

Q Showing that same matter contained in that record? A In reference to this there were no deposit slips, because these records were letters of advice.

Q Do those letters relate to an account that was opened in the National Bank of Commerce on the fifth day of March, 1910, by Edward T. Canfield? A Yes, sir.

Q What is that record?

*Mr. Ward.* Is the witness about to state the contents or describe it?

*Mr. Faulks.* What does the witness produce?

A Letter of advice book, advising deposits made to the credit of different depositors, various depositors.

Q What period does that record cover? A March 2, 1910, to March 8, 1910.

*Mr. Faulks.* Is that the record or only the stub?

*Witness.* This is the stub.

Q How and by whom is that record made? A We have a letter of advice which is attached to this stub; the advice goes to the depositor and there is also a receipt attached to this record which goes to the party making the deposit. This is made up in duplicate

Q And that procedure is gone through with whenever an account is opened at your bank? A No, I wouldn't say that.

Q When is that procedure followed which you have just described? A Lots of times the depositor might ask for a receipt, and then he would send around to my window and I issue these letters of advice; any number of times a

depositor might leave his money there without getting any receipt for it.

Q In this case there was a receipt issued; why are those receipts issued? A To show that the money was deposited.

Q Does he then become a regular depositor in your bank? A Yes.

Q Was he also issued a pass book? A Not always, no, sir. Sometimes they don't ask for any pass book.

Q In this particular case was a pass book issued? A To the best of my knowledge there was not.

Q What is that record you have there; is that a record of original entry? A Yes.

*Mr. Faulks.* Is your inquiry directed to this book or some particular entry in the book?

*Mr. Brown.* To some particular entry.

Q What entries in this book relate to that account that I have just asked you about?

*Mr. Faulks.* There has been no inquiry about any particular account that I know of.

Q Is that the only entry in that book that relates to the account of Edward T. Canfield? A No, sir.

*Mr. Faulks.* I object to that and ask leave to make this inquiry of the witness: Does that book contain entries of any other account that was opened on March 5, 1910?

*Mr. McCarter.* What is Mr. Faulks doing now, cross-examining?

*Mr. Faulks.* I want to find out what this book is and to what Mr. Brown's questions are directed; he says that they were directed

to an account that was opened on March 5, 1910; does this contain the record of any other account that was opened on that day?

*Mr. McCarter.* We are talking about the Edward T. Canfield account.

*Mr. Faulks.* There is nothing to show that that is the one you are talking about, because when I asked Mr. Brown he said he was talking about an account opened on March 5, 1910.

*Mr. Brown.* Of Edward T. Canfield.

*Mr. Faulks.* I want to know whether there were any other accounts opened on that day.

*Mr. McCarter.* We say on behalf of the examining counsel, that the only account we are referring to is the Edward T. Canfield account opened on the 5th of March, 1910.

*Mr. Faulks.* We say there is no evidence that any account was opened in that bank by Edward T. Canfield on that date.

*By Mr. McCarter.*

Q Witness is asked what this document bearing the number 62396 and dated March 5, 1910, at which he opened the book or record before him, is?

*Mr. Faulks.* We object to that as irrelevant, immaterial and incompetent, and on the ground that the record has not been proven.

A That is my record in the teller's department that Edward T. Canfield deposited $1,550,000 to his own credit.

Q On? A On March 5, 1910.

*Edwin K. Roche, cross.*

Q In other words, on the 5th of March, 1910, a gentleman by the name of Edward T. Canfield did deposit in the National Bank of Commerce in this city $1,550,000; he was given a letter of advice stating that he had so deposited that money, and this is the entry that you kept, a memorandum in the bank of the deposit? A Yes, sir.

Q Made at that time? A Yes, sir.

*Mr. Ward.* Objected to as irrelevant.

Q By you? A Yes, sir. I might say this is the handwriting of my assistant.

Q Done under your direction? A Yes.

Q What other entries do you make in the bank coincident or contemporaneous with the entry in this particular book? A There is another part which goes to the bookkeeper, and the bookkeeper makes his entry right from that.

Q But this is the original entry that was made at the time the deposit was made? A Yes.

*Mr. McCarter.* We offer that deposit slip in evidence and ask to have it marked.

*Mr. Faulks.* I desire to cross examine.

*Cross examination* by Mr. Faulks.

Q The writing on this page No. 62396 is in your handwriting? A No.

Q Did you see the entry made? A Yes.

Q What is this book which you produce? A It is called letter of advice book, advising deposits made.

Q This is only the stub end of the book, is it not? A Yes.

Q What did the balance of the book contain that has now disappeared from it? A The let-

ter of advice and the part which we call a receipt; that is drawn in duplicate.

Q Do you call the stub that remains a letter of advice? A No, we call that the stub.

Q And attached to that there was a letter of advice? A Yes.

Q And what else? A And a receipt, a duplicate receipt.

Q What is done with the letter of advice? A The letter of advice goes to the depositor; I should say the one having an account in the bank.

Q Do you know whether the letter of advice that was attached to this particular stub sheet 62396 went to Mr. Edward T. Canfield? A No, sir, I don't recall that; I cannot say.

Q You have no recollection on the subject? A No.

Q Do you know what was done with the receipt that was attached to that letter of advice? A I don't recall that, no, sir.

Q Whose writing is this, in blue? A That is mine; those are my initials, E. K. R.

*Mr. Faulks.* I object to the reception of this page from the stub book in evidence, on the ground that it and its contents are irrelevant, immaterial and incompetent.

*Mr. Ward.* I desire to cross examine.

*Cross examination* by Mr. Ward.

Q Have you any actual recollection in your mind of this transaction? A I cannot say that I have. I simply speak from the records.

Q Do you universally compare or check up the work of your assistant in sending out these letters of advice in the making of this record? A Yes; he don't do any signing, he merely

makes the letter of advice out and I do the signing; therefore I go right over it.

Q Do you always see the check or every item which is deposited? A Yes, sir, always do.

Q Are you willing to swear that in every instance in which such a letter of advice has been sent, you have seen the item and have compared it with the record? A Yes, sir.

Q Is that true, do you think, of an entry on the stub No. 62412, dated March 7, 1910? A Yes, sir, that is my writing there now.

Q Are the initials in blue, at the bottom of the entry which has been offered in evidence, written by you? A Yes, sir.

Q Do you say you remember you saw your assistant write this entry and make out the letter of advice? A I certainly must have seen it, because I sign all those letters of advice.

Q Aren't there sometimes a good many in the course of one day's business? A Yes, as many as fifty or sixty.

Q The volume of work passing through your hands as note teller is pretty large, is it not? A It certainly is.

Q In comparing the letters of advice with the items which are deposited, don't you have to do that hurriedly and more or less formally very often? A We are very careful in all our deposits, they are all checked back carefully.

Q Do you not rely upon the work of your assistant to a large extent? A Only in case of absence, when I am at lunch, then he takes charge for half an hour.

Q And during that time might not a letter of advice be made out by him and sent out, and after your return might you not then initial it as a matter of form? A It could come in, but I would know about it as soon as I came from

lunch, because I examine those things afterward; I always examined the stub to see what came in while I was out.

Q Possibly during your absence the letter of advice might have been sent out, though? A Yes, that is a fact; I wouldn't see the letter of advice in that case, but I would see the stub or record.

Q And in such a case the check which was deposited might have passed on its way to the receiving teller check clerk, might it not? A Not in the course of half an hour. I would look at the stub and also look at the check.

*Mr. Faulks.* You don't mean to say that you have any recollection of seeing your assistant make this particular entry, do you?

*Witness.* I have no recollection of that, no, sir.

Q You recognize it as his handwriting? A Yes, sir, I recognize the handwriting, and I know that I signed all those letters of advice.

Q You know it was your custom to sign it; you don't recall signing this particular one? A No, sir, I do not.

*Mr. Ward.* I object to the admission in evidence of this entry as not being proven and as not being relevant against the defendant which I represent.

*Mr. Faulks.* I join in that objection as to the defendants I represent.

*Re-direct* by Mr. McCarter.

Q The initials in blue pencil upon this particular entry indicate what, Mr. Roche? A That I passed on that.

Q And approved of it? A Yes.

Q And were sure that it was correct?

*Mr. Faulks.* I object to that as calling for a conclusion on the part of the witness and as being leading.

A Yes, sir.

Q Have you any doubt from this record whether you remember the individual occasion or not that on the fifth of March, 1910, Edward T. Canfield did deposit in the National Bank of Commerce in New York $1,550,000? A That is a fact.

*Mr. McCarter.* We will now have this marked subject to the objection, and also ask to have it incorporated in the record.

(Marked Exhibit C. 110.)

"$1,550,000.

No. 62396 Mar 5, 1910.

To Edward T. Canfield
847 Main Street, Hartford, Ct.

Received from Edward T. Canfield
For use of )
By order of ) Compared and L/A signed
(Blue pencil) E. K. R."

Q Have you any recollection whether in this particular case a letter of advice rather than a deposit book was issued? A No, sir, I have not.

Q Have you any other entry in this book of any other deposit about that time by Mr. Canfield? A Yes, sir, I have.

Q Please refer to it? A The same date, March 5, 1910, Edward T. Canfield deposited $1,600,000 to his own account.

*Mr. Ward.* That is subject to my objection.

*Mr. Faulks.* Same objection.

Q What have you before you to enable you to testify to that fact? A The stub on my letter of advice book.

Q The same letter of advice book? A Yes.

Q Numbered what? A 62406.

Q Whose handwriting is that in? A My own handwriting.

Q What does that fact indicate, that you personally conducted that transaction? A Yes.

Q And what are the blue lead pencil initials below? A That is my O. K.

Q So that you now can swear from looking at this particular memorandum No. 62406, that on the day it bears date, which is March 5, 1910, Mr. Edward T. Canfield also deposited $1,600,000 in this bank? A Yes, sir.

*Mr. Faulks.* We of course object to all this on the ground that it is irrelevant, incompetent and immaterial.

Q This memorandum was made in the course of business in the same general way that you described on the record about the other one? A Yes, sir.

Q And is the original entry in the bank of the fact of that deposit? A Yes, sir, it is.

*Mr. McCarter.* We now offer that memorandum No. 62406 subject to the objection and ask to have it marked and incorporated in the record.

(Marked Exhibit C. 111.)

No. 62406 "$1,600,000.
Mar 5, 1910.
To Edward T. Canfield,
Hartford, Conn.
Received from Edward T. Canfield
For use of Compared and L/A signed
By order of (Blue pencil) E. K. R."

Q Are you able from any memorandum in your possession to tell us the character of these deposits and whether they were checks or not? A Yes, sir.

Q What were they, checks? A Yes.

Q Can you tell us upon what banks they were drawn? A My records show that.

Q What record do you produce to indicate that? A The one for $1,550,000— ,

*Mr. Faulks.* What record do you produce?

*Witness.* This is my Clearing House list.

Q You produce a document which you call the Clearing House list, consisting of a document headed "National Bank of Commerce, New York, note teller's list;" date, March 5, 1910; is that right? A Yes, sir.

Q Consisting of one long sheet? A Yes.

Q What is the list of figures that is pinned to the list you have just spoken of? A That comprises checks drawn on the National City Bank on that day.

Q How do you tell that? A From the number mark here below, No. 8.

Q That is the number of the National City Bank, known in banking circles as No. 8 in the Clearing House system? A Yes, sir.

Q So that by referring to the original Clearing House list and the long slip of figures that you have produced, you are able to tell whether or not the check for any given amount that we have named was drawn on the National City Bank? A Yes.

Q Are those the original memoranda kept by the bank? A Yes, sir, they are our records.

*Edwin K. Roche, cross.*

*Mr. McCarter.* I offer in evidence the note teller's list, National Bank of Commerce, March 5, 1910.

(Marked Exhibit C. 112.)

And also, the list of figures, comprising checks drawn on the National City Bank on that day.

(Marked Exhibit C. 113.)

*Mr. Faulks.* I would like to cross examine.

*Cross examination* by Mr. Faulks.

Q Were these records prepared by you? A No, sir, they were not.

Q I notice that both the sheet itself and the slip attached to it is in typewriting; you didn't do the typewriting? A No, sir..

Q Do you know who did? A No, I do not, at the present time.

Q In what department of the bank were those records prepared? A Note teller's department.

Q You don't know by them they were actually prepared? A No.

Q You don't know that they represent transactions or part of the transactions of any particular day, except from the fact that the sheet is stamped with a particular date? A That is right.

Q When did you ever see this before the time they were gotten out for production here? A I doubt if I saw them since March 5, 1910.

Q You have no recollection of having seen them on that day? A I have not since that time.

Q Have you any recollection of having seen them at that time? A Oh, yes, I saw that sheet on that day.

Q That would be the usual course of practice that you would see the sheet that was prepared? A Exactly.

Q But you have no recollection of having seen this sheet on that particular day? A I will tell you; I will explain that.

Q I want to know first whether you have any recollection of having seen this particular record on that particular day? A I might say that I see them every day.

Q Then you say that in the ordinary course of business you see each day the sheet that is prepared for that day? A Yes, sir.

Q The only indication to your mind that the checks listed on the slip attached to the sheet were drawn on the National City Bank is the blue pencil figure on the bottom of it, 8? A Yes, sir.

Q You haven't any other recollection on that subject? A That is all.

*Cross examination* by Mr. Ward.

Q Are the machine listings of the clearings made in your department? A Not all of them, no, sir, only my own department.

Q Do you compare the checks sent through the Clearing House with the machine listings yourself? A No, sir, I do not.

Q In case a check deposited with you were drawn upon an out-of-town bank, that is, a bank other than one in New York City, would it pass through the Clearing House? A Not a Clearing House member? There are some out-of-

town Clearing House members; they go right through the Clearing House.

Q What banks are those, banks in Brooklyn? A Yes, Jersey, Brooklyn, Staten Island, Long Island.

Q Banks in the immediate vicinity of New York? A You take a bank like the Corn Exchange Bank, with branches all over the city, Long Island City, Staten Island.

Q If a check were drawn on Philadelphia or Baltimore or Chicago, it would not pass through the Clearing House? A No, sir.

*Further direct* by Mr. McCarter.

Q Describe the course of procedure on a given day; for instance, the day to which these two documents, C. 112 and C. 113, relate; what connection do you have with it? You say that every day you see these things at their proper time? A Yes.

Q Tell us what occurred; we are not bankers. A When deposits are made through the window and I issue a letter of advice and receipt and the letter of advice is mailed to our depositor, it goes right through my department to the bookkeeping department, and of course that is entered immediately after I take my record, the stub and so on. In this case where the check is drawn on the City Bank, there is a Clearing House list made of all checks on the City Bank, and it is handed over to the night force, to be gotten ready for the following day, to go through the exchanges.

Q What particular attention do you pay to the two slips that I hold in my hand, on each day; how do they come under your particular

cognizance? (Referring to C. 112 and C. 113.) A They are part of my work—my department.

Q Why do you pay any attention to this? A Because I have got to take a record of the total of all these checks in order to prove my day's work.

Q And this paper bears evidence that this was under your particular supervision that day? A Yes, sir.

Q And you are satisfied that that is an accurate record of the particular transactions of that day? A Yes, sir.

Q You are able to tell us upon what bank these two checks that you have referred to as having been deposited by Mr. Canfield were drawn? A Yes, sir.

Q One or both? A Both checks.

Q Will you please point out on this slip the reference to the National City Bank? A The National City Bank is right here (indicating) $1,550,000.

Q Did you have any other deposit in this record on the fifth of March for $1,550,000 beside Mr. Canfield's deposit? A No, sir, I did not.

*Mr. Faulks.* Does that record contain all the deposits of that day?

*Witness.* All of that particular type.

*Mr. Faulks.* What do you mean by "particular type?"

*Witness.* Those issued by letters of advice.

*Mr. Faulks.* There were other deposits on that day not covered by letters of advice, were there not?

*Witness.* Those put in in a pass book form.

Q They are not included in this list? A They are all included in that list.

Q Are you able to tell us upon what bank the other deposit made by Mr. Canfield referred to in the other exhibit was drawn? A It was drawn on the Manhattan Company.

Q Have you a record of that there? A Yes, I have it here.

Q Do you find that? A Yes.

Q The slip you produce with regard to that is the same as the other paper? A Yes.

Q What number is that? A No. 2 in the Clearing House.

Q That is what bank? A Bank of Manhattan Company.

Q And what is this green slip that you produce in connection with the machine listing? A These are the records from the other departments that are carried over on this list, nothing to do with this matter at all.

Q Both of these documents you produce from the files of the bank, do you? A Yes.

Q So that the other deposit for $1,600,000 was from what bank? A Bank of the Manhattan Company, No. 2.

Q Was there any other deposit for $1,600,000 on this date, than that of Mr. Canfield's? A No, sir.

Q What verification do you make at the end of each day to be sure that these are right? A We take a list of our credits, crediting to the different accounts, and then a list of the debits, and one offsets the other.

Q They prove themselves? A Yes.

Q If an error occurred, would it show? A It would show in my proof.

Q Have these proven? A Yes.

Q So there was no error? A No.

*Mr. McCarter.* I would like to offer this slip last produced, in evidence. It will not be necessary to offer the green slip.

(Marked Exhibit C. 114.)

*Cross examination* by Mr. Faulks.

Q Referring to the slip which you were last shown by Mr. McCarter, the one which you say relates to the Bank of the Manhattan Company; was that prepared by you? A That was prepared in my department.

Q But not by you? A Not by me personally.

Q You didn't see it prepared? A No.

Q Do you know who in your department prepared it? A No, sir, I do not.

Q You didn't in fact know anything about it, except that it is produced from the records of the bank and relates to this account with the Bank of the Manhattan Company, because it bears this blue lead pencil figure 2 on it? A Yes, sir.

Q In addition to any deposits that were made on March 5, 1910, and entered in this letter of advice book, of which you have produced the stub, there were a great many other deposits made in the bank on that day? A Yes.

Q Of which you have no record here? A No, sir.

Q In regard to which you haven't attempted to testify, have you? A No, sir, I have not.

*Edwin K. Roche, cross.*

*Mr. Faulks.* I object to the reception of either of these lists in evidence, on the ground that they are irrelevant, incompetent and immaterial.

*Mr. Ward.* Same objection.

*Cross examination* by Mr. Ward.

Q If some other depositor of the bank had deposited the check for $1,600,000 on the Bank of the Manhattan Company on March 5, 1910, and if Mr. Canfield's check for that amount had been on some out-of-town bank not a member of the Clearing House, then your inference that Mr. Canfield's check was drawn on the Bank of Manhattan Company would be disproved, would it not? A In this case I am sure, because my records show that.

Q You refer to the records that have been produced and offered in evidence? A Yes.

Q Might not the figures $1,600,000 on the machine listing for the Bank of Manhattan Company have represented a check deposited by some other customer of your bank? A Not in this case, no, sir.

Q What examination have you made in order to assure you of that fact? A I know that is the only one I had on that day for $1,600,000 in my department.

Q Not all of the deposits go through your department? A No, sir, they do not.

Q Have you examined all of the other accounts in the bank on that day, to see whether anybody else deposited a check for that amount? A No, sir, I have not.

Q Or any check for $1,550,000? A No, sir.

LEWIS A. KEIDEL, sworn for complainant.

*Direct examination* by Mr. English.

Q What is your connection with the National Bank of Commerce? A I am one of the assistant cashiers.

Q Are you familiar with the general practice of banks operating through the Clearing House? A I am.

Q And in connection with that general practice do you receive from other banks in New York a statement of the amount of checks drawn on your bank and deposited in their bank from time to time? A We do.

Q Have you produced, at our request, a statement received by your National Bank of Commerce on March 7, 1910, of the checks drawn on your bank which went through the Bank of Manhattan Company on March 5, 1910? A Yes.

Q What are the papers which you produce as showing that? A Various slips on which are listed the checks drawn on the Bank of Commerce and received through the Clearing House from the Bank of the Manhattan Company.

Q And those slips are three in number which you produce? A Three or four.

Q And they show the individual amount of each check? A They do.

Q And also the aggregate of all the checks? A They do.

Q I call your attention to one of those slips which has a series of figures, the total of which aggregate $1,991,901.51; that was one of the slips received? A It was.

Q And that shows the aggregate amount of all the checks drawn on your bank and deposited with the Manhattan Company Bank on March

5, 1910? A I don't know when they were deposited, but payment was demanded of the Bank of Commerce through the Clearing House, through the Bank of Manhattan Company, on March 7, 1910; presumably they were deposited there on the fifth.

Q That is the usual practice, to send in the checks the next day that were sent in the day previous? A Yes.

*Mr. Ward.* I move that the portion of the answer relating to the Bank of Manhattan Company be stricken out.

*Mr. Faulks.* I join in that motion.

Q Do the items or figures on this slip to which I have directed your attention, which precede the aggregate which you have given, represent all the individual checks which were drawn on your bank and deposited in the Manhattan Bank at that time, or are they aggregate or totals? A In some cases aggregate and in some cases totals.

Q In some cases individual checks? A Yes, some cases individual, and some cases totals.

Q I see heading the list the figures $1,500,000, do you know what that refers to? A That refers to an individual check.

Q An individual check drawn on your bank and deposited with the National Bank of Manhattan Company? A Yes.

*Mr. English.* I offer in evidence the slip which has been referred to by the witness.

*Cross examination* by Mr. Faulks.

Q This slip was not prepared in your bank? A No.

*Lewis A. Keidel, cross.*

Q Is there anything on it, other than the dates stamped in red ink,—March 5, 1910, and March 7, 1910, that indicates to your mind that it was received by your bank on either of those dates? A Only the date.

Q When did you first see this slip? A Three or four days—when our bank got the subpoena and got these papers out.

Q You never saw it until the subpoena was issued for its production here today? A I never saw it before.

Q And where did you obtain it? A From the place where we keep the old records.

Q Did you get it out yourself? A No, through one of the clerks whose duty it is to get those things.

Q That is all you know about it? A Yes.

*Mr. Faulks.* I object to its admission in evidence on the ground that it is immaterial and incompetent, and that neither it nor its contents are proven.

*Cross examination* by Mr. Ward.

Q This was not verified by you, I presume, when it was received by your bank? A Yes, it was.

Q I mean to say when it was received on March 7, 1910, did you have anything to do with checking it up? A Personally?

Q Personally. A No, that would be out of the question for an officer of the bank.

Q It wasn't part of your duty? A No.

*Mr. Ward.* I object to the introduction in evidence of the slip on the ground that it is not proven, and it is not evidence of the fact for the purpose of which it is offered, and not relevant or material.

(Slip referred to marked Exhibit C. 102.)

*Re-direct* by Mr. English.

Q This slip, Exhibit C. 102, was received by your bank in the usual course of business?

*Mr Faulks.* He said he never saw it until the subpoena for its production was served three or four days ago, and I object to it.

A It was.

Q And that is the character of slip you receive every day in this Clearing House matter? A Yes.

Q Is anything done in your bank to check up the figures given in this slip which is received from the Manhattan Bank. A The practice now is, and has been for many years, to relist all the checks received on a separate slip.

Q Was that the practice in March, 1910? A Yes.

Q Was that done by your bank? A Yes.

Q Have you got your list here? A Yes.

Q This is the list you produce, a machine-made list, giving a great number of separate figures? A It is.

Q And each of these figures represents what? A An individual check.

Q And how does that compare with the aggregate of the slip C. 102? A It agrees in the aggregate.

Q Is there an individual check on this machine slip prepared by your bank to correspond with the entry of $1,500,000 on slip Exhibit C. 102? A Yes.

Q There is a check there for that amount? A There is.

*Mr. Faulks.* There is an entry of that amount.

*Mr. English.* That is what he means. I offer in evidence the slip made in the office of the Bank of Commerce, the machine list.

*Cross examination* by Mr. Faulks.

Q When did you first see this machine list that is now offered? A It was with these papers; it was filed away with these papers and taken out at the same time the other papers were taken out.

Q It was brought to you by a clerk? A At the same time.

Q That is all you know about it? A Yes.

Q After the subpoena was served? A That is right.

Q And you never saw it before that time? A Never saw it before.

Q And don't know from whence it was produced except as the clerk brought it to you with the clearing house slip? A And told me that he found it with the other papers.

*Mr. Faulks.* I object to the reception in evidence of the machine list upon the ground that is immaterial and incompetent, and that neither it nor its contents are proven.

*Mr. Ward.* Same objection.

(Machine list marked Exhibit C. 103.)

*Re-direct* by Mr. English.

Q Who is the clerk who made that machine list? A I don't know.

Q What kind of a clerk makes that sort of a list? A One of perhaps one hundred young men we have around there, and I don't believe we could find out who made that.

Q And they make it up from the checks which they physically have before them? A Yes.

Q Suppose the list received from the sister bank, in this case C. 102 from the Manhattan Company, did not correspond as to the figures on your machine list, what would be done, if anything? A A claim would be made against the issuing bank—against the sister bank, as you call it, for the difference, or if there is an average, they would make a claim against us.

Q Was there any such discrepancy either way in this instance? A One cent.

*Mr. Faulks.* All you know is what the paper shows now?

*Witness.* That is all.

Q Both of these papers, C. 102 and C. 103, were produced from the files of this bank? A Yes.

Q Where they have been on record ever since March, 1910?

*Mr. Faulks.* He does not know.

A I don't know. They were delivered to me by the clerk who had instructions to get those from the files of the bank; I should imagine it gives me every reason to say I have reason to believe they are. Personal knowledge I haven't, because I didn't get them myself.

Q And the practice of the bank was to file away and keep these slips and lists? A Yes.

Q Who is the clerk who handed you these things? A A youngster by the name of Szymanski.

Q Where does he live? A I do not know.

Q I see No. 23 at the head of this Exhibit C. 102, what does that mean? A That is the

Clearing House number of the Bank of Commerce.

Q Every bank has a number and you are 23? A Yes.

Q Whose account was the check for $1,500,000 charged to on the books of your bank?

*Mr. Faulks.* There is nothing to indicate that he has any knowledge on that subject. If that question is pressed, I object to it on the further ground that it is incompetent and irrelevant.

Q Do you know to whose account on the books of your bank the check for $1,500,000 was charged?

*Mr. Faulks.* There is no evidence that we regard as competent evidence that there was any such check as the one you mention.

A I would have to see the check before I could answer the question.

Q Do you know whether it was a depositor's check or cashier's check?

*Mr. Faulks.* Same objection.

A I haven't the check, so I cannot tell.

Q I ask you if you know? A No.

Q What are the books of your bank which would indicate to whom that check was charged? A The check desk records. I will have to correct that. The books of the bank in which a check of that amount would appear charged—I don't say that check, but in which a check of that amount would appear charged, are the check desk records.

Q Who in 1910, in March, kept the check desk records? A I don't know.

Q What kind of a person in your bank keeps that record, what character of person? A One

of the men in the check desk department, in which there are a number of men—sixteen.

Q Who was the head in March, 1910, of the check desk department? A I don't know.

Q The officers named of your bank have been subpoenaed to produce all the books and records in which were entered or charged the checks or orders for the payment of money received by the National Bank of Commerce from the Bank of Manhattan Company through the New York Clearing House on March 7, 1910, including the book known as the check desk scrap book covering March 7, 1910; have you got them here? A No; there are so many that we didn't know whether it was really intended that they were wanted, because a truck could hardly hold them.

Q All we wanted were the ones relating to the Bank of Manhattan Company. A The identity of checks coming from any one bank is lost in those records.

Q It is possible to search through and find the record which has this particular check for $1,500,000, isn't it? A Yes, it is possible to find an item of that amount listed among the others.

Q And that will show to whom the check was charged on your books, will it not? A Yes.

Q From that book, what other books are the other entries made in? A Entries in what?

Q Entries covering charge of this $1,500,000 check. A The only other entry remaining to be made would be the one in the depositor's account.

Q The ledger account? A Yes.

Q So you get the name of the depositor from the check desk book, and from that you go to the ledger? A Yes.

Q And from the name in the ledger you could get the signature card of the depositor? A That is right, assuming that we have the signature card; we don't keep those indefinitely.

Q Suppose that was a cashier's check, what would be the record on that; would you have the check? A Yes, we would have that check.

Q Your officers were subpoenaed in this case to produce such check, if it was a cashier's check; have you produced it? A No, because there was no cashier's check of that amount received from the Bank of the Manhattan Company on that day. There, again, I might say, that the records literally called for in the subpoena are very bulky.

Q Whatever check this was, was a check of the depositor?

*Mr. Faulks.* I object to it as leading.

Q Have you examined the records which were called for in the subpoena, to find out whether there was a cashier's check of $1,500,000 issued by your bank and returned through the Bank of Manhattan Company through the Clearing House on March 7, 1910? A Personally I did not.

Q Have you caused such an examination to be made? A Yes.

Q And what is the result of it? A There was none such.

Q Do you know whether this check for $1,500,000 was certified by your bank?

*Mr. Faulks.* I submit there has been no proof of any such check. There is proof of entries which might or might not have

been a check of that amount, but no proof of any check of that amount.

A I hardly know how to answer that question, because—I will answer it in my own way: Our records show that on that day, on this same day, a certified check of that amount was received through the Clearing House.

Q And received from the Bank of Manhattan Company?

*Mr. Faulks.* Objected to as incompetent and immaterial.

A I don't know; I would have to have the check.

*Mr. Faulks.* And on the further ground, that the records ought to be produced.

*Witness.* We will have to have the check in any event. If there was such a check, it was surrendered long ago, and we wouldn't know.

Q You have a certification book or some records? A List like this, but no identification marks.

Q When you certify a check, don't you make a record of the person to whom it is charged? A Yes, but when the check is in—

Q We will go back of that. You do have records showing the depositors to whom you charge certified checks? A Yes.

Q And you must have a record, if this was a certified check, of the depositor to whom it was charged? A Yes.

Q We asked you to produce such a book; have you done it? A As I explained, there are many of them, and we are quite willing, if necessary, to produce them.

Q It is possible now, with the information you have, to find the book which shows the charge to the depositor for the certification of this $1,500,000 check, if it was in fact certified? A Of a check for that amount, yes, sir.

Q Have you made any investigation to see if you have such records? A Personally, no; but I caused them to be made.

Q And whom do you find a check of that amount was charged to?

*Mr. Faulks.* We object to that upon the ground that it is incompetent and irrelevant, and upon the ground that this is certainly not the proper way to prove what is sought to be established.

Q Who at your request or instructions made this search or investigation? A This same man, Szymanski.

Q From your knowledge of the books of the bank, what books would he examine into to find this check? A These certification books.

Q Any other books? A No.

Q That would give him the name of the depositor to whom it was charged? A It would.

Q Did you cause any examination to be made of the ledger account of this same depositor? A No, I don't recall that I did.

Q From your examination of the books, do you know what the name of this depositor was to whom this $1,500,000 check was charged?

*Mr. Faulks.* It does not appear that the witness has made any examination of the books; it does appear that he directed Szymanski, the clerk in the bank, to make some examination, and that his only source of knowledge, if he has any knowledge at

all, would be the result of some report that Szymanski made to him, and that would clearly not be competent evidence.

Q Did you examine the books which Szymanski dug out? A No.

Q Have you ever seen those books? A No.

Q Who is the person who kept the certification book in March, 1910? A I don't know.

Q Can you ascertain? A Yes.

Q Who is the person who kept the ledger account in March of 1910? A The same person.

Q You will have to find that out? A Yes.

Q Who is the person in charge of the signature cards which were brought in in March, 1910, during or prior to March, 1910? A I would have to find that out.

Q Mr. Keidel, the officers of your bank have been subpoenaed to produce a series of books and papers which are all set out in the subpoena served, and we ask you now to produce so much of them as relate to this check for $1,500,000 which was drawn on your bank and deposited in the Bank of Manhattan Company and returned by that company through the Clearing House to your bank, and in particular, we want the check desk book, the ledger account, certification book and the signature card, and if you cannot produce them today, my suggestion is that we adjourn until tomorrow morning at 10 o'clock, and then go on. A Yes, sir.

Q And in that connection will you investigate and be able to tell us the names of the persons who kept these various records, if you don't now know? A Yes, sir.

(By consent of all parties, the further taking of testimony under this notice is adjourned to Saturday morning, May 2nd, 1914, at 9 o'clock, at the same place.)

Continuation of depositions in the foregoing cause, pursuant to adjournment, before Nicholas W. Bindseil, a Master in Chancery of New Jersey, at the rooms of the New York County Lawyers' Association, on the fifth floor of No. 165 Broadway, New York City, on Saturday, May 2nd, 1914, at 9 a. m.

Present: Counsel as before stated.

LEWIS A. KEIDEL, recalled for further

*Direct examination* by Mr. English.

Q Mr. Keidel, have you produced the check desk book of your bank showing a check for $1,500,000 on or about March 5, 1910? A I have.

Q Will you produce it, please? A Yes, sir. (Producing same.)

Q This book which you produce, and which has stamped on the outside "Accepted checks, debited, 111," that is the book? A That is the book.

Q And you turn to pages and entries on those pages under the heading appearing on March 7, 1910? A Yes.

Q And you indicate an entry for $1,500,000; what does that entry indicate or refer to?

*Mr. Faulks.* I object to that on the ground that it is immaterial and incompetent, and I ask leave to cross examine

the witness as to his knowledge of this book.

*Mr. English.* I have no objection.

*Cross examination* by Mr. Faulks.

Q Mr. Keidel, did you keep this book? A I did not. By keeping, did I—

Q Did you make the entries that appear in it? A No.

Q Did you make any of the entries that appear in it? A No.

Q Did you make any of the entries that appear on these pages headed March 7, 1910? A I did not.

Q Are those entries in the same handwriting? A I should say yes.

Q Were you present when these entries were made? A I was not.

Q By whom were they made? A I don't know.

Q You are one of the assistant cashiers of the National Bank of Commerce? A I am.

Q And you have simply produced this book as one of the books of that bank, in response to the demand made on you by the complainant in this suit? A That is correct.

*Mr. Faulks.* I submit that it is clear that Mr. Keidel is not competent to answer the question, and that he has no knowledge with reference to the entry inquired about which would make such an answer competent. I also submit that the book is not in any way proven.

*Further direct* by Mr. English.

Q Is this book which you produce one of the books that the bank kept in the regular course of business? A Yes.

Q And has been produced from among the records of the bank? A Yes.

Q You say you don't know in whose handwriting that is? A I cannot, because I wasn't then with the bank.

Q You were not then with the bank? A No.

Q How long have you been with the bank? A About two years.

Q Do you know whether anybody whom you now are associated with writes similarly to the handwriting that appears on this book?

*Mr. Faulks.* I submit that that is too indefinite.

A I do not.

Q Is it possible to find out in whose handwriting these entries were made? A Yes.

Q And how would you go about it to find out? A I would ask the clerk who got that record out.

Q And that was Mr. Szymanski? A Yes.

Q So Szymanski knows who made those entries? A He does.

Q Going back to the entry which we pointed out, for $1,500,000, I see the page on which it is entered has three columns; on the left are certain names; what do those names generally represent? A The names of the accounts to which the items are charged. I want to qualify that; in that particular the names represent the names—they are sub-headings—all of the items in that book are charged to certified checks.

Q Before they are charged to the account of the depositors? A They have already been charged to the accounts of the depositors.

Q And the names that appear in this column are the names of the depositors to whom the

checks have been charged? A When they were first certified.

Q So that this list of names in this column does contain the list of the names of the depositors to whom the checks were originally charged when first certified? A By process of elimination, I would have to say yes, but strictly speaking, no.

Q What do you mean by "strictly speaking?" A As a bookkeeping matter, all those items were not charged to the account of the customers from that, but to the account called certified checks.

Q But the name of the depositor is the same in each instance? A That is right.

Q To the right of this list of names is a column containing some figures; what do those figures indicate? A The amounts of individual checks.

Q Which are charged to the particular account? A Yes.

Q And to the right of that column of figures is still another column; what does that indicate? A Where more than one check is charged against that account, or rather more than one check previously charged to one customer, the total of those checks; where there is only one, the single check is extended right off.

Q So that is simply a total of the previous column? A Yes.

Q Will you please turn to the entry to which I am referring and read the name of the depositor in the extreme left hand column, the amount of the checks charged to him, and the total as it appears on this book?

*Lewis A. Keidel, direct.*

*Mr. Faulks.* I submit that that is not proper; the book is not proven, the witness has no knowledge as to the person by whom it was kept; he was not in the employ of the bank or connected with the bank at the time the entries in question were made, and it surely cannot be competent to have him testify as to entries appearing on the book. I don't know as you have referred to any particular entry; have you?

*Mr. English.* I thought I had.

Q I refer now to the entry which I originally called to your attention, namely, for $1,500,000, under which is written another entry, apparently, $1,550,000, and I ask you to refer to this book and the place of the book where the entry is contained, and give me the name of the depositor to whom the accounts are charged, the amount and the total.

*Mr. Faulks.* I renew my objection, and I submit that this is an improper method of examination, and the evidence sought to be obtained cannot properly be obtained in this way, or in any other way than by the usual method of procedure, namely, proper proof as the record which is produced.

*Mr. Ward.* I make the same objection, and the objection also, that the answer and the entry cannot be evidential against the Pacific Navigation Company, and that this entry has not in any way been connected with or identified with any of the previous testimony in such manner as to make it evidential.

A E. Canfield, $1,500,000
1,550,000
$3,050,000

*Mr. Joiner.* I move that the latter part of the answer dealing with the question for $1,550,000 be stricken out, as it is not so connected with any of the previous testimony as to be relevant or material.

*Mr. Faulks.* I move that it all be stricken out as incompetent and irrelevant.

*Mr. Brown.* I offer in evidence so much of the book produced by the witness, which he calls the check desk book, and which seems to be officially endorsed, "Accepted Checks Debit 111," and particularly the entries under the heading of March 7, 1910, including the entries last referred to by the witness.

*Mr. Faulks.* I make the same objection to this offer as I did to the oral testimony of the witness relating to the same entries.

*Mr. Joiner.* I renew my objection.

(Marked Exhibit C. 104.)

*Witness.* The following is a copy of the entry:

"Canfield, E..... $1,500,000
1,550,000
$3,050,000."

Q You produce the general ledger which connects up with this account mentioned in this last Exhibit C. 104?

*Mr. Faulks.* Objected to as calling for a conclusion on the part of the witness.

*Mr. Ward.* Same objection.

A Yes, sir. (Producing same.)

Q The book which you produce is endorsed on the back, "Balance Ledger Statements A-Z, January 1, 1910-June 30, 1910"; that is correct? A Yes.

Q Please turn to the entry in the book. A Yes, sir. (Witness does so.)

Q You turn to a page, and to that part of the page headed Saturday, March 5, 1910; is that correct? A Yes.

Q And the page also has the page number 6? A Yes.

Q What is the entry which you point out as being connected with the entry in the Exhibit C. 104?

*Mr. Faulks.* Same objection.

*Mr. Joiner.* Same objection.

A The item marked $3,100,000.

Q And does it appear from this book to whom that entry is charged?

*Mr. Faulks.* Same objection, and I ask leave to cross examine the witness as to his knowledge of the book.

*Mr. Joiner.* Same objection.

A It does.

*Mr. English.* You may cross examine.

*Cross examination* by Mr. Faulks.

Q Did you keep this book, Mr. Keidel? A I did not.

Q Was it kept under your direction? A No, sir.

Q I understand from your earlier testimony that you were not connected with the National Bank of Commerce at the date under which

these entries appear in the book, namely, March 5, 1910? A That is correct.

Q And, again, you have simply produced this book at the demand of the complainants? A That is correct.

*Further direct* by Mr. English.

Q This book is also one of the regular books of the bank kept in the regular course of business? A Yes.

Q And produced from among its records in response to our subpoena? A Yes.

Q Who is the person in whose handwriting these entries are, if you know? A I don't know.

Q Is it possible to find out? A Yes.

Q Is Szymanski the man who knows? A Yes, he is the man who might know.

Q If he doesn't know, who does? A We will have to search around.

Q In whose department is this book kept, or was it kept? A The department of ledger clerks.

Q Who was the head of that department? A Miller; I don't know his initials.

Q Do you know where he lives? A I don't know.

Q How long has Mr. Miller been with the bank? A Many years.

Q So if Szymanski doesn't know, Miller probably does know in whose writing these entries are? A I should say so; yes, sir.

Q You have told us that this book indicates the name of the depositor to whom this account is charged; who is the depositor to whom it is charged, as appears from the book?

*Mr. Faulks.* I object to that, on the ground that it is incompetent and irrelevant,

and on the further ground that the evidence sought to be obtained cannot be brought out in this way or from this book until the book is properly proven, which it certainly is not at this time.

*Mr. Joiner.* The same objection, and the further objection that it is not evidential against the Pacific Navigation Company.

A Edward T. Canfield.

Q I see opposite his name the figures which you gave, $3,100,000, and under that the figures $50,000; what does that $50,000 refer to?

*Mr. Faulks.* Same objection.

*Mr. Joiner.* Same objection.

A I don't know.

Q Is that another entry charged to his account?

*Mr. Faulks.* Same objection.

*Mr. Joiner.* Same objection.

A Separate proposition.

Q Then to the right of those two figures are the following figures, one under the other, $1,550,000 and $1,600,000; what do those figures indicate?

*Mr. Faulks.* Same objection.

A Deposits placed to the credit of that account.

Q So that taking this entry from left to right, you have first the name of the depositor?
A Right.

*Mr. Faulks.* It is understood that our objection goes to all of this testimony?

*Mr. English.* That is satisfactory.

*Lewis A. Keidel, further direct.*

Q Then you have the amount of the drafts charged to his account? A Of the items charged to his account.

Q And then you have to the right of that the amount of the deposits against which the items are charged; is that correct? A That is correct.

Q Does it appear from this book when the account was opened? A It does.

Q What date? A On the fifth day of March, 1910.

Q Does it appear on this book when the account was closed? A It does.

Q On what date? A The same day.

Q And this is the same account which is referred to in the check book, Exhibit C. 104; is that correct? A It is.

*Mr. English.* I offer in evidence so much of the ledger book produced by the witness, and in particular that part of the book which is referred to as page 6, under date of Saturday, March 5, 1910, which refers to the account of Edward T. Canfield, and ask that it be marked in evidence.

*Mr. Faulks.* I object to the reception of this on the ground that it is incompetent and irrelevant, and on the further ground that the book and no part of it has been proved, and no ground laid for its reception.

*Mr. Joiner.* Same objection on behalf of the Pacific Navigation Company.

(Marked Exhibit C. 105.)

"Depositors Saturday 5 Mch 1910
Canfield, Edward T., $3,100,000 E $1,550,000
50,000 " 1,600,000"

*Lewis A. Keidel, further direct.*

Q Turn to the entry in this last Exhibit C. 105, which you say represents the amount of the deposits originally made, one for $1,550,000 and one for $1,600,000; do they each represent separate checks for that amount?

*Mr. Faulks.* I submit that there is no proper basis for that question. The witness wasn't even with the bank at the time these entries were made, and he of course cannot know.

*Mr. Joiner.* Same objection.

Q What is the practice in your general ledger with reference to the entries which appear in that column which sets up the amount of the deposit; is it customary or not to enter in each item the total amount of one check or the aggregate of several checks?

*Mr. Faulks.* Objected to on the ground that it is incompetent and irrelevant; that the present practice is of no importance, and he can only know what the practice was before he went with the bank as a result of information given him by others, which would surely be hearsay evidence.

*Mr. Joiner.* Same objection.

A The practice is to credit aggregates and not individual items.

Q And has that been the practice there so long as you have any familiarity with this bank?

A Yes.

Q Turning then to this entry in evidence, does the $1,550,000 represent an individual check or an aggregate of checks?

*Mr. Faulks.* Same objection.

*Mr. Joiner.* Same objection.

A I don't know.

Q What about the $1,600,000?

*Mr. Faulks.* Same objection.

A Same answer.

Q Who does know? A The receiving teller.

Q What is his name? Who is the present receiving teller? A Berthhof; I don't know his initials.

Q Do you know where he lives? A No, I do not know.

Q How long, to your knowledge, has he been receiving teller? A About a year.

Q Was he connected with the bank before being receiving teller? A He was one of the assistants in that department.

Q Do you know how long he has been in that department? A Many years.

Q And is he the man who makes the entry in this ledger book? A No.

Q From what is this ledger entry made? A From the deposit slip.

Q The deposit slip which goes to the teller's window is taken by the bookkeeper and entered in this ledger; is that correct? A That is right.

Q Does your bank make a practice of keeping those old deposit slips? A For a time.

Q For how long? A A year anyway.

Q Do you know whether it has the deposit slip representing these particular deposits? A I don't know.

Q Is there anything else, other than the deposit slips, from which you could ascertain whether that was a single check or an aggregate of checks? A No.

Q Nothing else? A No.

Q This ledger is the first entry made from the deposit slip? A From the deposit slip.

*Lewis A. Keidel, further direct.*

Q Are there any records in your bank which would indicate on what bank or banks the checks which make up this entry of Edward T. Canfield were drawn? A Yes.

Q What are those records? A The receiving teller's.

Q What do those records consist of? A Machine listings of checks passed through his department.

Q And who makes that machine list? A One of the clerks.

Q In the teller's department? A Attached to that department.

Q And this receiving teller would know who that clerk is, if anybody knows? A No, that would be out of the question. Any one of a hundred clerks may have made that, and they are all machine figures.

Q Is that machine list still in existence? A I don't know.

Q Is it the practice of the bank to keep such a list? A For a time.

Q And that machine list in any given case would indicate on the list all the checks received from any particular bank? A The proposition is reversed now. The checks drawn on any particular bank.

Q It would show the list of checks drawn on any particular bank? A Yes.

Q Through the Clearing House, that same practice we had the other day? A Yes. This is the reverse side of that.

Q So that if these entries in Exhibit C. 105 represent deposits made by checks drawn on other banks, that would appear from the Clearing House slips and machine-made list; is that correct? A That is correct.

*Lewis A. Keidel, further direct.*

Q Is there anything to indicate whether the checks which went to make up this deposit were drawn on your own bank as opposed to some outside bank? A The records I spoke of would probably show that; that or the deposit slip.

Q Would the deposit slip indicate whether it was a check drawn on your own bank? A It might.

Q If that does not, what records would? A The deposit slip or the check desk records, either one or the other would.

Q Turn to this check desk record book, which is Exhibit C. 104, and tell me whether or not this Edward T. Canfield account was made up of checks drawn on your own bank?

*Mr. Faulks.* I make the same objection as I did when the witness was interrogated before about this exhibit.

*Mr. Ward.* Same objection.

A We are getting into a confusion now. There is no connection between these two items. You are asking me about a credit, and this refers to debits alone.

Q Exhibit C. 104 refers to debits alone? A Yes.

Q What was the book which you referred to as tending to show what I am now talking about? A When I say check desk records, I mean any one of hundreds of books, and this is one of hundreds.

Q You mean another one of the same kind of book as this Exhibit C. 104? A Another book from the same department, perhaps marked differently.

Q But in this particular book now before us? A No, but a book having similar functions.

*Lewis A. Keidel, further direct.*

Q So there is, or ought to be, in existence a book of the check desk variety which does show whether or not these checks which went to make up this deposit to the credit of Edward T. Canfield were drawn on your own book? A If you change your question to "might show," I will say yes.

Q Might show? A Yes.

Q What other books besides this check desk book, which you last spoke of, might show such a fact? A The customer's deposit slip.

Q So the records that would go to determine whether or not the checks which made up this deposit were drawn on your own bank, would be the particular desk check book which might show that fact, or the deposit slip; is that correct? A That is right.

Q And the records which you would turn to to ascertain whether the checks were drawn on some other bank would be the clearing house slip and the machine-made list; is that correct? A They mean the same thing.

Q You mean the Clearing House list and machine-made list are one and the same to you? A Yes, one and the same thing.

Q Would you turn to any other records to ascertain whether or not the checks came from other banks? A In that case, no.

Q Suppose the check came from some bank out of the city of New York, not in the Clearing House, what would you turn to? A Then the letter accompanying that check would contain all the information. In this case, it being a local matter, we wouldn't look for such a record, and I am reasonably certain that there isn't such a—

Q This came from a sister bank? A This

matter is a New York matter and there would be no occasion for it.

Q Either starting in your own bank or some other New York bank? A That is right.

Q Have you examined the records to ascertain which was the situation? When I say "situation," I mean have you examined the records to ascertain whether these deposits which were credited to the account of Edward T. Canfield in Exhibit C. 105 were by checks drawn on your own bank or on some New York bank? A No, I did not.

Q Do you know whether anybody has, under your instructions? A I have not given such instructions.

Q Do you know, as a matter of fact, whether anybody has, regardless of instructions from you? A I do not.

Q We asked you to produce a certification book; have you got that, referring to this same account? A I have. (Producing same.)

Q You produce here a sort of loose-leaf affair? A Yes, sir.

Q And you point me to an entry which has stamped at the top, "Statements A-Z, March 5, 1910," and under that is given the name of the depositor? A Yes.

Q And the amount of the checks charged to his account? A Right.

Q And this paper, you say, is the certification record? A It is.

Q And it shows that the checks listed opposite the name of the depositor were certified by your bank and charged to him? A It does.

Q Do you know in whose handwriting that record is kept? A I do not.

*Lewis A. Keidel, cross.*

Q Is this sheet produced by you from the records of the bank? A It was.

Q In whose department is such a record made and kept? A In the certification department.

Q Who is the head of that department? A Montgomery; initials and address I don't know.

Q How long has Mr. Montgomery been with the bank? A Many years.

Q Do you know whether Mr. Szymanski would know in whose handwriting that is? A Yes.

*Mr. English.* I offer in evidence the record and ask the witness to read it.

*Mr. Faulks.* I want to ask him a few questions.

*Cross examination* by Mr. Faulks.

Q You were not connected with the bank when this record was kept? A No.

Q You know nothing more about it than you do about the other records which have been produced here this morning? A That is correct.

*Mr. Faulks.* I object to the introduction of these sheets, or of any part of them, on the ground that they and their contents are incompetent and immaterial, and are entirely unproven.

*Mr. Ward.* Same objection, and also on the ground of irrelevancy.

(Marked Exhibit C. 106.)

*Witness.* (Reading):

"Statement A-Z, March 5, 1910.

| | | | |
|---|---|---|---|
| Canfield, Ed T. | 1 | 1,500,000 | |
| | 2 | 50,000 | |
| | 3 | 1,550,000 | 3,100,000." |

*Lewis A. Keidel, further direct.*

*Further direct* by Mr. English.

Q This Exhibit C. 106 has charged opposite the name of Mr. Canfield three separate items; do they each represent a check charged to his account?

*Mr. Faulks.* I submit that the witness is shown not to have any knowledge on the subject, and I object to the question as incompetent.

A They do.

Q These checks were certified by your bank on the same day that the deposit was made; is that not true, as appears from the records?

*Mr. Faulks.* I submit the witness cannot know that that is so, and that in view of his lack of knowledge of these records and his not being connected with the bank at the time they were made, the question is improper.

A Yes.

Q Is there anything to show whether the deposits which went to make up that deposit to Edward T. Canfield, upon which these checks were certified, was originally made by either cash or certified check? A The deposit slip would show that. We went over that ground before.

Q The same slip in the hands of the receiving teller? A Yes.

Q We asked you to produce the signature card of this man; have you got it with you? A Yes, sir. (Producing same.)

Q And this is the card which you produce? (Indicating.) A It is.

Q Taken from the records of the bank? A It was.

Q That shows the name and address of the depositor and his official signature? A Yes.

Q Upon which checks drawn on his account are to be honored? A Yes.

Q Do you have any practice of having the name of the introducer of the account set up on your signature card? A Not that I know of.

Q What is the lead pencil writing on the back of it, anything? A I don't know.

Q Does that lead pencil mark on the back indicate someone's initial who had to do with this account? A I don't know what that means.

Q Is there any practice in your bank to have the person who has to do with the opening of the account, initial the back of the signature card? A Not that I know of.

Q You say that this card is the official card for this account which is referred to in Exhibits C. 104, C. 105, and C. 106?

*Mr. Faulks.* He hasn't said that.

*Mr. Ward.* Same objection.

A Yes.

Q Do you say that now? A Yes.

*Mr. English.* I offer in evidence the signature card.

Mr. Faulks. I want to ask a question about it.

*Cross examination* by Mr. Faulks.

Q When did you first see this signature card? A Yesterday afternoon.

Q And the basis of your statement that it is the signature card of the account referred to in these Exhibits C. 104, C. 105 and C. 106, is the fact that it bears the same name and is dated March 5, 1910? A And was produced to me as

the signature card, on my instructions to get that card.

Q You asked someone to get the signature card for Mr. Edward T. Canfield's account? A I did.

Q And he brought this to you and said this was it? A That is right.

Q That is all you know about it? A That is all I know about it.

*Mr. Faulks.* I object to the reception of this card on the ground that it is immaterial and incompetent, and on the ground that it is not proven, and move to strike out the evidence of the witness as to what the card is, and as to its being the card for this particular account.

(Card referred to marked Exhibit C. 107.)

(Exhibit C. 107).

"Authorized signature of

(Printed) Canfield, Edward T. Mar 5, 1910

(Written) Edward T. Canfield.

847 Main St.,

Hartford, Conn."

*Further direct* by Mr. English.

Q What is the practice of your bank with reference to accounts of strangers to the bank; do you require them to be introduced by anybody? A Yes.

Q That is the usual practice? A Yes.

Q You say you were not in the bank when this account was opened? A No.

Q So you don't know who this depositor was introduced by? A No.

Q Who in the bank would know that? A I don't know.

Q Who has charge of the opening of accounts for large and substantial amounts at the present time? A No one particular officer.

Q This should go through the cashier's department? A Through the paying teller's department; he is the custodian of those things.

Q The person who wants to open a new account goes to the paying teller's department? A No, the cards are finally lodged in the paying teller's department.

Q Going back of that: when a new depositor comes to the bank to open up an account amounting to several millions of dollars, in what department, in the ordinary practice, would he first go? A He would first see any one of the officers.

Q And when you say "officers," what class of officers do you refer to? A Any one of the officers, senior or junior.

Q Cashier or assistant cashiers? A Yes.

Q The president of the bank? A Very rarely.

Q Vice-presidents—do you have vice-presidents? A Yes, sometimes.

Q So he would see probably one of the vice-presidents or the cashier or one of the assistant cashiers? A He would.

Q And then whatever business he negotiated with them would result in the making out of this signature card? A Yes.

Q In the cashier's office or vice-president's office, as the case may be? A Wherever they may happen to have the conference or the interview.

*Lewis A. Keidel, further direct.*

Q Then that signature card would be taken to the paying teller? A Yes.

Q And so that he would become familiar with the signature? A Right.

Q In the ordinary practice would there be any other record of the opening of an account, than the signature card? A If it were an out-of-town account, there would probably be correspondence.

Q What would the records in the case of an out-of-town account probably be? A The signature card and correspondence.

Q Suppose that the depositor had come in with an introducer without any preliminary correspondence? A Then there would be no correspondence.

Q Would there be any other kind of a record beside the signature card? A No.

Q If this deposit was originally opened by checks drawn on other banks, your bank in the ordinary course of business would send those checks to the proper bank through the Clearing House?

*Mr. Faulks.* I object on the ground that the witness has not shown any knowledge as to what the course of business was at that time, and if he knows, he only knows as the result of statements made to him by others.

Q How long have you been in the banking business? A Not until I came with this bank.

Q What was your business before that? A I was an accountant.

Q Previous to your connection with this bank and while you were an accountant, did you have occasion to become familiar with the Clearing House practice? A In the way a layman knows about it generally.

*Lewis A. Keidel, further direct.*

Q And so far as your knowledge goes, has the practice of banks with reference to the Clearing House been the same in the last five years? A Yes.

Q From your knowledge of the Clearing House practice, assuming that a check is drawn on another bank and deposited in a given bank, let us say the National Bank of Commerce, would the National Bank of Commerce, in the ordinary course of business, send that check with other checks and a proper slip, through the Clearing House on the next business day?

*Mr. Faulks.* I object to that question, if it relates to a time prior to the witness's connection with the National Bank of Commerce, on the ground that he is not shown to have had any knowledge of the subject matter of the question before that time.

A Yes.

Q Does your bank, since you have been connected with it, keep a record of checks sent through the Clearing House which have been received and deposited by your bank and drawn on other banks? A Yes.

Q What is the name of that record? A That is the same record that we spoke about before, the receiving teller's record.

Q One of these check desk books? A The check desk records relate to checks coming through the Clearing House against the bank; the receiving teller's records include the records of checks drawn on the Clearing House, deposited with us.

Q What is the name of the book which, in the ordinary course of business, ought to show the name of the bank on which the checks in this

Canfield account, assuming that they were drawn on some other bank, are set up? A There would be no book; there would be a bundle of machine lists.

Q And a duplicate of the slip sent to the Clearing House? A Yes.

Q In whose custody at the present time is that class of records? A Receiving teller. Strictly speaking, the rack department, but that is a side department of the receiving teller; call it the receiving teller.

Q But that is a part of the receiving teller's department? A Yes, call it receiving teller's department.

Q Who is the present receiving teller? A Berthhof.

Q Does your bank keep any book showing an aggregate of claims against another bank presented through the Clearing House? A Yes.

Q And what class of officer or employee in the bank keeps that book? A The mail teller.

Q Who is the present mail teller? A Frawley; I don't know his initials nor his address.

Q How long has Frawley been with the bank? A Many years.

Q How long has he been mail teller, to your knowledge? A Several years.

Q Ever since you have been with the bank? A Yes.

Q When your bank received this subpoena, and you personally undertook to get out those records, whom did you turn to to get them out for you? A Szymanski.

Q What is Szymanski's position in this bank? A He is the man who is directly in charge of the old records.

Q How long has Mr. Szymanski been with the bank? A Many years.

Q He knows as well as anybody about these old records? A No.

Q Who knows more? A I don't know as you can reach him now; he is no longer employed; he succeeded the clerk who had charge of the old records.

Q What is Szymanski's official title? A He is one of the clerks in the auditing department.

Q You say he has charge of the old records; has he any title? A No.

Q Who was the man whom he succeeded in that office? A In that particular work, a fellow by the name of William Yoost.

Q Where did he live when you last knew of him? A He lived in—we could get his address.

Q Did he live in the city of New York or out of the city? A In the city.

Q How long ago did he leave your bank? A Less than a year.

Q Do you know what he is doing now? A No.

Q Do you know what line of work he went to take up after he left you? A The moving picture business.

Q Is there any one in your bank who has general charge of the employees? A Yes.

Q Who is that? A Assistant cashier, William St. John.

Q He is one of your associate cashiers? A Yes.

Q Where does he live? A Brooklyn.

Q Do you know how long he has been with your bank? A Eight or ten years.

Q You say he has general charge of the employees of the bank? A Yes.

Q And he probably, better than anybody else, knows the names and addresses of these various

employees? A I should say yes; his secretary would probably know more about it.

Q The secretary works under St. John? A Yes.

Q What is the secretary's name? A Erland; I don't know his first name and I don't know his address.

Q Is it usual in the banking business for one bank to be a depositor in another bank? A Yes; there would be no excuse for New York, if that were not so.

Q But that sometimes is the fact, that one bank is a depositor in another bank? A Yes.

Q And it is also the banking practice to have correspondent banks for another city? A Yes.

Q What is the function of a correspondent bank in another city? A You are getting into a great big question now, but for the purpose of answering the question the way I think you want it answered, it is to provide borrowing facilities.

Q That is the ordinary function of a correspondent bank? A Yes, and as a collection medium for checks drawn on people in that particular locality.

Q Do you know whether the Farmers Loan and Trust Company is a depositor in your bank? A I don't know.

Q Do you know whether it ever has been? A No. That is a matter of record.

Q Who would have charge of records of that character? A The chief ledger man, Miller.

Q What is the title of the records which show that? A The depositors' ledger.

Q Is that the same kind of book as this ledger which you produced here today? A Yes.

Q Has your bank any correspondent bank in

New Haven, Connecticut? A I guess I will have to say I don't know.

Q Who does know? A Miller.

Q Who else knows, some officer of the bank know? A Yes.

Q What officer? A I cannot mention any one in particular.

Q Some of the cashiers or assistant cashiers? A I don't know, because I haven't been with the bank long enough to carry those things in my head.

Q Some of the vice-presidents or cashiers or assistant cashiers would know? A Yes.

Q Do you know whether your bank has any correspondent bank in Hartford, Connecticut? A Yes. I cannot give the name of the bank, though. I do recall that we have a correspondent bank in Hartford.

Q Do you recall whether you have a correspondent bank in New Haven? A No; I don't say that there is none.

Q Do you recall the name of the bank? A No.

Q Knowledge of that fact would be with some of your associate cashiers or the vice-presidents? A Yes.

Q Your officers were subpoenaed to produce the account of your bank with the Second National Bank of New Haven; have you got it? A That was one of the things I had with me yesterday, and not mentioning it specially, I left it on the desk, and I can get it.

Q We also asked you to produce the account of the Billard Company with your bank. A We have no such account. I desire to make a correction. I was asked to get the papers in connection with the subpoenas, and I had occasion to

investigate the account of the Second National Bank of New Haven, and there is nothing in there that connects with this transaction.

Q Then let it appear now that your bank has a correspondent bank in New Haven, namely, the Second National Bank of New Haven? A Yes.

Q And you have examined the records and there is nothing in it which connects it with the transactions put in evidence this morning? A Right. I should not say "transactions"; I should say "entries."

Q The records which we have put in this morning relating to the account of Edward T. Canfield, namely, Exhibits C. 104, C. 105, C. 106 and C. 107, relate to the same matter as appeared on Exhibits C. 102 and C. 103 put in on Thursday last, with particular reference to check for $1,500,000?

*Mr. Faulks.* I object as calling for a conclusion on the part of the witness, which would in any any event be worthless, because of the fact that he is unfamiliar with these records, or any of them, and was not connected with the bank at the time they were made.

*Mr. Ward.* Same objection.

A Yes.

Testimony closed under this notice.

It is stipulated and agreed by counsel for the respective parties, that Mr. Joseph Cohen may be called as a witness on behalf of the complainant in the place of Robert B. Montgomery, with the same force and effect as if his name had been included in the notice of taking depositions.

JOSEPH COHEN, sworn for complainant,

*Direct examination* by Mr. English.

Q Where do you live? A 1403 Bryant avenue, Bronx.

Q New York City, Borough of Bronx? A Borough of Bronx.

Q You do not live in New Jersey? A No, sir.

Q Are you connected with the National Bank of Commerce? A I am.

Q In what respect? A Clerk in the foreign exchange department.

Q Who is your immediate chief? A Mr. Rovensky, the assistant cashier.

Q He is the assistant cashier in general charge of that department? A Yes.

Q Does the foreign exchange department keep records of the certification of checks? A No, it does not—well, it does of its own foreign correspondents.

Q What do you mean by foreign correspondents? A I mean that foreign correspondents who send checks here to banks or individuals, and the parties in New York who wish to have them certified, present them at the foreign department, and we pass on them for signature, and as having advice of payment. We then notify the certification clerk that the draft is

in order to be certified, and they certify on the strength of our authorization.

Q What is this paper which you produce, which has already been marked in this case Exhibit C. 106? A That shows that three checks have been presented over the window.

*Mr. Faulks.* You are asked what is this paper.

*Witness.* This is a certification sheet; there are various sheets and this pertains to a certain ledger A to Z.

Q And does it refer to the account of any particular person? A No, it pertains to all the accounts on that particular ledger.

Q This particular sheet which you produce, does that relate to any particular account? A Yes, two of them.

Q It relates to the account of Edward T. Canfield? A Yes, sir.

Q And in whose handwriting is it? A The entries on this sheet are in mine.

Q And did you make them about the date which is given at the top, March 5, 1910? A On that date.

Q What does the entry with reference to the Edward T. Canfield account show?

*Mr. Ward.* I object as immaterial, irrelevant and incompetent.

*Mr. Faulks.* Same objection.

A It shows that three checks have been presented for certification over the window for those respective amounts.

Q You refer to an entry of $1,500,000, $50,000 and $1,550,000? A Yes, sir; that is right.

Q You say that those three checks were certified? A Yes, sir.

Q And then after they were certified, you made this entry on this sheet? A No, sir; before they were certified the entry was made.

Q Did you have the checks before you when you made the entry? A I did.

Q Do you remember by whom they were signed? A No, I do not.

Q On what bank were they drawn, your own bank? A Yes, sir.

Q Drawn on the National Bank of Commerce? A Yes.

Q Do you remember to whose order they were drawn? A I do not.

Q And those three checks as stated on this Exhibit C. 106 were certified by your bank?

*Mr. Faulks.* I object to that upon the ground that the witness has not shown any knowledge on the subject of whether the checks were certified by his bank or not.

A Yes, sir.

Q What is the practice with reference to the certification of checks in your department? A You mean the certification part; I am in another department now; I presume you refer to the certification.

Q I mean on March 5, 1910, what was the practice in which you had a part with reference to the certification of checks? A Checks are generally handed over the window and I take them and enter them to the respective accounts.

Q The checks are handed to you? A No, handed over the window; put in the window and I take them off the window and charge them to the respective accounts.

Q Handed in the window for the purpose of being certified? A Yes.

*Joseph Cohen, direct.*

Q You personally take the checks and charge them to the property account? A I did those; yes, sir.

*Mr. Faulks.* On this certification sheet which you produce?

*Witness.* Yes.

*Mr. Faulks.* And before they are actually certified?

*Witness.* Yes.

Q There you charged to the account of Edward T. Canfield the three checks mentioned on this sheet C. 106? A Yes, sir; I listed those checks on that sheet.

Q And they were charged to his account on the books of your bank as certified checks, is that correct?

*Mr. Faulks.* I object to that; he does not know about that.

A I cannot say about that.

Q They were charged to his account? A I cannot say that either.

Q They were entered on this sheet for the purpose of being charged to his account? A That is right.

Q And this is a part of the procedure when checks are certified, is that correct? A Yes, sir.

Q After this sheet is made out by you—what was done with it at that time? A It is held until about quarter after three, or 3:30, at which time we make proof of the day's work, and then it goes over to the bookkeeping department, and the bookkeepers charge them to the respective accounts.

Q In the ledger A to Z? A Yes, in this case.

Q And then the physical certification of the check is taken care of by someone else in the bank? A Yes, sir.

Q What is the practice with reference to charging the amount on the books of the bank to the person who signs the check? A I don't quite get that.

Q Is it the practice to charge the amount on the books of the bank against the person who signs the check? A It is; yes, sir.

Q So that if these entries were made against Edward T. Canfield, that indicates that he signed the three checks, does it not? A It does.

Q Is there any record kept of the banks on which those checks are drawn? A They are drawn on the Bank of Commerce if they are certified; they had to be drawn on us.

Q Is there any record of the payee of the check? A No, sir.

Q When you charge a certified check, do you keep any record of the person to whom it is payable? A We do not.

Q Simply the amount of the check? A Yes.

Q And the name of the depositor? A Yes.

Q So there is no record in your bank to indicate to whom they were drawn? A I cannot answer that definitely; the certification department don't keep it.

Q You speak now only of your department? A The certification department.

Q Whether any other department does, you don't know? A Not to my knowledge.

Q How do you know in making these entries that the signature of Mr. Canfield in this case is authentic? A I don't pass on that; the certification clerk passes on that.

Q After the check leaves your possession? A Yes, sir.

Q You make the entry and then it is passed on? A Yes, sir.

Q Are any other entries made in your department with reference to this particular check? A Not that I know of.

Q No other entries are made by you? A No, sir.

Q What has the certification of a check like this got to do with the foreign exchange feature that you spoke of? A You happened to relate something that obtained to my present position; I am in another position than I was at that time.

Q This particular matter represented by Exhibit C. 106 had nothing to do with the foreign exchange? A Absolutely nothing at all.

Q You occupy now a different position than you did in 1910? A Yes, sir.

*Mr. English.* I call attention on the record to the fact that Exhibit C. 106 now proved by the witness, is referred to on page 864 of the testimony of Lewis A. Keidel.

*Cross examination* by Mr. Faulks.

Q Am I right in understanding that in March, 1910, you were clerk in the certification department of the National Bank of Commerce? A On that date, March 5; yes, sir.

Q How long had you held that position at that time? A About four years.

Q When a check or checks were received through the window for certification, they were taken by you, were they, and listed on a sheet

or sheets similar to this one Exhibit C. 106? A Yes, sir.

Q And then what did you do with the checks, give them to Mr. Montgomery? A I put them in the basket and he took them out of it.

Q What did you do with the sheet or sheets like this Exhibit C. 106? A They are kept in a sort of a binder in rubber band form.

Q Did you have anything more to do with either the checks or the sheets after you had put the checks in the basket and had made your entries on the sheet? A Not to my knowledge.

Q You had nothing to do with the verification of the signatures on those checks? A No, sir.

Q You had nothing to do with the actual certification of the checks themselves? A No, sir.

Q And nothing to do with the charging of the checks to any particular account or accounts? A Outside of listing them on the sheet C. 106.

Q This isn't a charging of the amounts; this is simply a list of checks presented for certification. A To be charged to the account.

Q If certified? A If certified.

Q That was your entire part at that time in any matter connected with the certification of checks? A Well, no; I had other duties besides; that was only part of them.

Q Any other duties relating to this list? A No, sir.

Q What other duties did you have relating to the certification of checks? A Nothing.

Q All you know, therefore, is that by referring to this sheet Exhibit C. 106, dated March 5, 1910, you made the entries that appear

on it as a memorandum or record of the fact that checks as stated therein were presented for certification? A Yes, sir.

*Cross examination* by Mr. Ward.

Q Did you have anything to do with the delivery of the checks to the depositor after certification? A No, I did not.

Q You don't know what course the checks took after they left your hands? A I know the next course was being certified by the certification clerk.

Q You had no personal knowledge as to their subsequent disposition? A No, I had not.

*Re-direct* by Mr. English.

Q Tell us a little bit about the procedure in 1910: to whom was the check to be certified handed by the depositor? A They are handed over the window first.

Q The teller's window? A The certification window.

Q And who was the man back of that window on March 5, 1910? A I was.

Q It was handed to you? A It was laid on the window.

Q You were right there; is there more than one person in the cage? A There are two.

Q Who is the other man? A I cannot recall his name.

Q They came to your window first? A Yes.

Q And then you took them and made the entry on this sheet Exhibit C. 106? A I take the sheets I have before me; we split them up in two divisions.

Q You took the check and made an entry on that occasion? A Yes.

*Joseph Cohen, re-direct.*

Q Then what did you next do with that check? A I put it in the basket for the certification clerk.

Q And he takes it from your basket? A Yes.

Q What does he do with it? A He certifies it.

Q What entry does he make? A He ascertains whether the account is good for the amount.

Q He looks up the account of the depositor to see if he has that amount of money? A Yes, examines the account and signature card.

Q And then he examines the signature card for one and the books for the other? A He ascertains that the account is good for the money.

Q What kind of an entry does he make? A None, he simply signs his name on the certification stamp.

Q Then after that is done, what becomes of the check? A Then they are given out to whoever put them in for certification.

Q Given to the depositor? A Given to whoever presents the check for certification.

Q Is that you? A No, there are boys there for that purpose.

Q You mean you give it to some little messenger who takes it back to the depositor? A He calls them out in the payee's name.

Q He does what? A He delivers the check to the payee or the party who passes it in for certification.

*Mr. Faulks.* He delivers them to whoever presents them at the bank?

*Witness.* Yes.

*Joseph Cohen, re-direct.*

Q Is the only entry that is made in the entire process between the time the depositor hands in the check and the time it comes back to him, this entry on Exhibit C. 106? A Yes.

Q And after that, that sheet C. 106 is written up in the ledger, is that correct? A Eventually.

Q Any other entries made in any other books? A I cannot say.

Q Who was the man at that time who had charge of writing up in the ledger these certification sheets? A I cannot say; he may be here, I don't know.

Q Do you remember his name? A No, I do not.

Q Is that in the bookkeeping department? A Yes, sir.

*Mr. English.* I re-offer the Exhibit C. 106 in evidence, in view of the objections which were raised against it when it was first produced on the testimony of Mr. Keidel.

*Mr. Faulks.* I object to its reception in evidence on the ground that it and its contents are immaterial and irrelevant.

*Mr. Ward.* Same objection.

It is stipulated and agreed by counsel for the respective parties that Mr. James William Hyatt may be called as a witness on behalf of the complainant, in place of Gilbert B. J. Frawley, with the same force and effect as if his name had been included in the notice of taking depositions.

JAMES WILLIAM HYATT, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A New Rochelle, New York state.

Q You are not a resident of the State of New Jersey? A No, sir.

Q Have you any connection with the National Bank of Commerce? A Bookkeeper.

Q How long have you been bookkeeper? A Alternately, I have been bookkeeper for about twelve or thirteen years.

Q Were you bookkeeper in March, 1910? A Yes, sir.

Q I show you a book of the National Bank of Commerce, which is endorsed on the back, "Balance Ledger Statements A to Z, January 1, 1910, to January 30, 1910," referred to on page 848 of Mr. Keidel's testimony, and I ask you if you made any of the entries in that book at page 6 for March 5, 1910? A Yes, sir, I made those entries.

Q Did you make the entries which appear there in the account of Edward T. Canfield? A Yes, sir.

Q And from what data or memorandum did you make the entries which appear there in the name of Edward T. Canfield? A Are you

speaking of the entries—the debits or credits or all the entries?

Q There is in this book the entry, first, the name of the depositor, Edward T. Canfield? A Yes, sir.

Q Then there is following, to the right, the figures $3,100,000, and after that the figures $50,000; what does that column of figures refer to? A The $3,150,000 represents an entry which is made from the certification sheet.

Q And when you say certification sheet, do you refer to this Exhibit C. 106, which Mr. Cohen has just produced? A I presume that is the one; I haven't seen it, but that is where we get them, from the certification sheet.

Q What is the entry of $50,000 under that? A It looks to me very much like an afternoon posting, because those things that come through the Clearing House are posted in green ink, and the afternoon's debits which comes from the paying teller and the note teller and receiving teller, the different departments, would be placed in black ink, which on that $50,000 is what we call an afternoon debit; in other words, it is not a Clearing House debit.

Q Are those figures $3,100,000 and $50,000 in your handwriting? A Yes.

Q And also the name Edward T. Canfield? A Yes.

Q To the right of the figures last mentioned are the following $1,550,000, and under that $1,600,000; are they in your handwriting? A Yes.

Q What do they refer to? A Letters of advice.

Q And what was the object of those letters of advice? A They come to us from the note

teller's department and are entered against this account—Edward T. Canfield's account, because the name of the letter of advice calls for the credit to this account of this amount.

Q Which entry is made first, this relating to the letters of advice or this relating to the certification? A That is hard to tell back as far as that; I cannot absolutely say whether we had the credit first or the debit first; the possibility is that we had the credit first and the debit was applied against the credit; otherwise, it would show an overdraft. I presume, as near as I remember, we received the credits first and these debits were an after consideration.

*Mr. Faulks.* That was the usual course of business.

*Witness.* Yes, sir.

Q Do you make entries representing the letter of advice from the letter itself? A Those are made from the note teller's department; they are simply memoranda of the transactions that have occurred in the note teller's department, and they come up to the bookkeeper in that shape, and they post from those items themselves.

Q In what shape is the memorandum? A The shape that the note teller sends them up to us in. In other words, the letter of advice would be a regular form, and it states that this amount is to be credited to the account of Edward T. Canfield, and we mark it "Letter of advice," to show that it is not a deposit.

Q Do you know Mr. Edwin K. Roche of your bank? A Yes, sir, very well.

Q Was he in the note teller's department in 1910? A As near as I can recollect, he was—yes, sir; I can absolutely say that he was.

Q It already appears in this case from his testimony that there came to him a check for $1,500,000 and a check for $1,600,000, which were deposited to the credit of Edward T. Canfield, and against that he issued certain letters of advice; are the letters of advice which you mentioned the ones which he issued or the ones which came in from some other bank?

*Mr. Faulks.* I object to the question as leading.

A I can only say that those letters of advice are what we post direct from the note teller's department; the bookkeeper has no other connection with any records, only as they come from the note teller's department for credit to the different accounts.

Q I want to know whether the letter of advice is a matter which comes to your bank from some outside bank or is a matter which is issued by your bank?

*Mr. Ward.* Objected to; it does not appear that the witness is qualified to testify.

A The letter of advice is given—as near as I can understand—I have never handled any of them, but I think it is made out where a man presents a certain check, or someone presents it for his credit; he receives a letter of advice to show that it is to go to the credit of this account.

Q What bank issues that letter of advice? A Our bank, absolutely; I thought you wanted to know the nature of it.

Q No. A Absolutely our bank.

Q So when these checks aggregating $3,150,000 were deposited either by or for the credit of

Edward T. Canfield, your bank issued a letter of advice to him? A Yes.

Q Instead of a bank book? A Yes.

Q Mr. Roche testified that he did receive checks to the credit of Mr. Canfield, one for $1,550,000 and one for $1,600,000 (page 941 of his testimony); that he thereupon issued proper letters of advice, and he produced here the stubs showing the entry of those letters; are you referring to those same letters when you say that they are the memoranda from which you made the entry in this ledger?

*Mr. Faulks.* Objected to as leading.

A Yes, I refer to those—not the stubs, but the items that come up from the stub, which are passed up to the bookkeeper, and the bookkeeper takes the items that are made, and the stub is just the same as the check; the stub remains and the bookkeeper would take and post from the item that is made out from those checks.

Q I show you page 949 of the testimony of Edwin K. Roche, in which the Master has copied the stub of the letter of advice issued to Mr. Canfield by Mr. Roche for the deposit of $1,550,000, which is marked Exhibit C. 110 in this case; does that accord with the entry which you made on this ledger? A Yes, sir, that accords absolutely.

Q And that is the memorandum which you are referring to? A Yes, sir.

Q I show you also in the testimony of Mr. Roche at page 950 the letter of advice which he issued on the faith of the deposit of $1,600,000; is that the entry upon which you based an entry for the same amount in your ledger? A Yes, sir, absolutely the same.

Q And those entries were made by you on the date appearing in this ledger, March 5, 1910? A Yes, sir, on March 5, 1910, by me.

Q So that this ledger entry shows a credit of the two checks aggregating $3,150,000? A Yes, sir.

Q And the certification of two separate checks aggregating the same amount? A I cannot say that $50,000 was certified.

Q But it shows an entry of a charge to his account of $3,150,000? A Yes, sir, which was certified.

Q And the subsequent check for $50,000, which you don't know now whether it was certified? A No, I don't think it was, because it don't appear on the record as being certified.

Q These entries are all made by you in the course of your duties as bookkeeper? A Yes, sir.

Q Is there any entry made by anybody that you know of, as to the name of the payee in the check certified? A We don't see those checks at all; all we get is just the notification from the certification.

Q So far as you are personally concerned, you don't know? A No.

Q Do you know whether anybody else makes any record, from your experience in the bank? A No, I don't know.

Q You say you don't know; do you mean they don't make any such record, or you don't know? A Not to my knowledge.

Q You never heard of it? A No.

*Mr. English.* I will now re-offer the entry referred to by the witness in this ledger on page 6, for March 5, 1910, which has already been marked Exhibit C. 105, and ap-

pears in the testimony of Lewis A. Keidel at page 854.

*Mr. Faulks.* I object to the reception of these entries in evidence, upon the ground that they are immaterial and irrelevant.

*Mr. Ward.* Same objection.

*Mr. Faulks.* No cross examination.

*Cross examination* by Mr. Ward.

Q You don't make the entry to the credit of the depositor from the stub which Mr. Roche, the note teller, copies, do you? A No, not from the stub; that is his record.

Q You make it from some other paper, then? A From the paper that is detached from the stub.

Q Which comes to you from the note teller's department? A Yes.

Q Do you know anything about the check desk book of your bank which has been referred to in this case as Exhibit C. 104, and was endorsed on the outside, "Accepted checks debit 111"?

A I wouldn't have anything to do with that.

It is stipulated and agreed by counsel for the respective parties that Mr. Robert McGregor may be called as a witness on behalf of the complainant, in place of Faris R. Russell, with the same force and effect as if his name had been included in the notice of taking depositions.

ROBERT McGREGOR, sworn for complainant.

*Direct examination* by Mr. English.

Q Where do you live? A Yonkers. New York State.

Q You are not a resident of the State of New Jersey? A No, sir.

Q You are connected with the National Bank of Commerce? A Yes.

Q And have been for how long? A About twelve years.

Q So you were connected with it in March, 1910? A Yes, sir.

Q What was your position in March, 1910? A Outstanding certified clerk.

Q Was it a part of your duties to make entries in the book which is stamped on the outside "Accepted checks debit 111," referred to as the check desk book and marked in evidence in this case as Exhibit C. 104? A Yes, sir.

Q Did you in the course of business on March 5, 1910, make any entry in that book referring to the account of E. Canfield? A No, but I did on March 7th.

Q I call your attention to that page of this book which has already been marked Exhibit C. 104, referring to the account of E. Canfield; is that in your handwriting? A Yes.

Q And was made, you say, on March 7, 1910? A Yes.

Q And that refers to what? A Refers to the charge in the certified sheets of March 5, 1910, to E. T. Canfield.

Q What paper or memorandum did you have before you when you made your entry? A I had the check itself.

Q Signed by Edward T. Canfield? A Must have been.

Q You had two checks? A Yes, two checks.

Q The first was for how much? A $1,500,000, and the second for $1,550,000.

Q Had those checks been turned over to the depositor at that time? A No, sir.

Q And you made your entry from the original checks in this book? A Yes, sir.

Q Showing that the checks for that amount had been certified and charged to his account? A Yes, sir.

Q These checks were dated, as already appears, March 5, 1910? A As far as the certification stamp went; I cannot tell you anything about the check itself.

Q Did you have the check itself before you? A The check itself; yes, sir.

Q And that was after it had gone through the bank and come back to your bank? A After it passed through the bank and through the Clearing House to us.

Q So it came back to you as a check which had been used and deposited in some other bank? A Yes.

Q And sent back to you? A Yes.

Q You said a moment ago, when you had the check it had not yet been delivered to the depositor? A It hasn't yet been delivered to the depositor.

Q It hasn't been given up by the bank? A Yes.

Q You still have the check in your bank? A Not now, but we did then.

Q You are speaking of the time the entry was made? A Yes.

Q So the check after it was certified was given to the depositor and he deposited it in some other bank? A Yes.

Q It came back to you through the Clearing House? A Yes.

Q Then you had that check which thus came back through the Clearing House and made your entry? A Yes.

Q And in the course of business that check had been deposited on the business day previous to your entry? A Yes, sir.

Q It appears by the calendar that March 6th was Sunday, so that it was deposited on March 5, 1910? A It must have been deposited on March 5 in the other bank.

Q And then you got it the next business day, which was Monday, March 7th, through the Clearing House? A Yes.

Q Do you see the Clearing House slips when they come back through the Clearing House? A No.

Q You simply saw the check itself? A Just the check itself.

*Cross examination* by Mr. Faulks.

Q You have no recollection, have you, of these particular checks about which you have been answering "yes" to whatever Mr. English has asked you, have you? A No, sir; I have not.

Q You have no recollection of having made these particular entries? A No, not any recollection outside of it being in my handwriting.

Q Finding those entries in the book is your justification for saying they were made in the usual course of business? A Yes, sir.

Q And from the records in the manner that you have described? A Yes.

Q That is all you have to go by? A Yes.

*Re-direct* by Mr. English.

Q You recognize this book as the book 111 which you used at that time? A Yes, sir; positively.

Q And that is your handwriting? A Yes, sir.

*Cross examination* by Mr. Ward.

Q You don't know when the checks were dated? A No, sir.

Q Could certified checks pass through your hands other than checks coming in from the Clearing House? A I don't catch that.

Q Do all of the entries in that book relate to checks which come in through the Clearing House? A Not necessarily. There is a space there that is separated off, for checks that pass through the receiving tellers and come to me in the forenoon.

Q You said your depositor to whom the certified checks had been delivered must have deposited them in some other bank? A On March 7, these two checks.

Q They were not necessarily deposited by the person against whom they were charged by you? A No, sir; not at all.

Q Might they have been deposited before March 5? A I cannot answer that; I cannot answer about that.

Q You said they must have been deposited the day before? A If they were signed on the 5th of March and passed through my work on the seventh, naturally they would have to be deposited on March 5th, to reach us by the seventh.

Q Do your records show what time of the day they came in? A No, sir.

*Re-direct* by Mr. English.

Q You dealt only with certified checks at that time? A Yes, only with certified checks.

Q And in this book? A Yes, sir.

Q Look at your original entry in there and compare it with the copy of the same entry

which is made in the record at page 848, the testimony of Lewis A. Keidel; it corresponds? A Yes, sir.

*Mr. English.* I now re-offer in evidence the entry proved by the witness as appearing in this book "Accepted checks debit 111," which has already been marked in evidence as Exhibit C. 104, at page 848 of the testimony of Lewis A. Keidel.

*Mr. Faulks.* Objected to as immaterial and irrelevant.

*Mr. Ward.* Same objection.

LEO SZYMANSKI, sworn for complainant.

*Direct examination* by Mr. Brown.

Q Where do you reside, Mr. Szymanski? A New York; the Bronx, New York City.

Q You do not reside in the State of New Jersey? A I do not.

Q What business are you engaged in? A Clerk, National Bank of Commerce.

Q How long have you been engaged with the National Bank of Commerce? A About eight years.

Q Are you the man referred to by Mr. Pilat, who was just on the stand? A Yes.

Q Do you know what the items on that list, which is the same list we showed Mr. Pilat, represent? A This is the list Mr. Pilat showed to you?

Q Yes. Do those items represent separate checks or do they represent the aggregate of several checks? A They, in some cases, represent the aggregate and in some cases separate checks.

Q Have you any personal recollection of any of the items specified on this list? A No, I didn't handle the matter at the time, but I have looked up the matter; I have the listings.

Q Take the item $1,500,000, of what does that consist? A I have reason to believe that that one item?

*Mr. Faulks.* We object to that, unless the witness says that he knows about the matter, and move to strike out his last answer.

Q What is the source of your knowledge that that consists of one item? A A duplicate machine list.

Q Does the duplicate machine list show the items making up this $1,500,000? A No, sir; it shows an item of $1,500,000, which shows that that is a single item and shows that the entry of $1,500,000 is one item and not several.

Q Is the duplicate machine list identical with this? A No.

Q What is the difference? A It is a single machine listing, which is run up by a clerk who receives that package from the Clearing House, and he lists each and every item received from a given bank.

Q Have you that duplicate? A Yes, sir.

Q Have you got it with you? A Yes, sir.

Q Produce it. A (Producing same.)

Q When checks are received by the National Bank of Commerce through the Clearing House from other banks, how are those checks charged up to the various accounts on which they are drawn? A In total.

Q Do you make an entry in any book or record of each separate check? A Yes.

Q What books or records are they? A They are the original—the first record made, are you referring to?

Q The first record. A A check desk scrap book.

Q By whom is that kept? A By the clerk.

Q What particular clerk or individual? A The check clerk.

Q Who was the check clerk at that time, March 5, 1910? A That I am unable to say.

Q Where is that original list? A The original list by the Bank of Commerce?

Q The original entry you have just testified to, the scrap book? A It is in the bank's possession.

Q Did you examine that scrap book? A For what?

Q For checks received by your bank on March 7, 1910, through the clearing house? A As to what amounts?

Q For the sum of $1,450,000? A Yes, sir.

Q Did you find any such sum on that? A I did not.

Q Did you examine all the entries made in that scrap book? A From the listings; I went from the listing and found that we did not on that day receive a check of $1,450,000 from the Bank of Manhattan Company.

Q (*By Mr. English.*) What day is that? A March 7th, 1910, the date in question.

Q If that check had been certified by the National Bank of Commerce, if drawn on it, when would it be charged up to the account of the customer? A On the date of the certification.

Q If certified before March 5th, 1910, and deposited in the Bank of Manhattan Company, would it appear in this scrap list which you

have just described, on March 7, 1910? A Yes, it would appear in the listing of checks received from the Bank of Manhattan Company on March 7, 1910.

Q If certified before it was deposited in the Bank of Manhattan Company, would it appear in this scrap book about which you have just testified? A Yes, it would.

Q Would it appear in that scrap book under tht date of March 7, 1910? A Yes, all items received from the Clearing House on a given day are entered in the scrap books of that day.

Q What is the next entry made of checks after they are entered on this scrap book? A They are entered by the bookkeeper in total against the different accounts—against the makers.

Q Is no other entry made except the entry in the scrap book and the in toto entry to the account of the person who drew the check? A Yes, of a separate individual statement.

Q What does that separate individual statement show? A The individual entries, separate entries.

Q Does it show the entry of each check? A Yes, sir.

Q Have you examined those entries? A Of what?

Q Showing checks charged on March 7, 1910? A No, sir.

Q Would those entries show anything else than the checks contained on this scrap book? A The entries against the separate account, that is on the statement—yes, sir, there might have been various entries, different ones.

Q That did not appear on the scrap book? A Oh, yes.

Q So that if this check for the sum of $1,450,000 did not appear on the scrap book, might it still appear on these individual entries? A No.

Q Did you examine your accounts with other banks to see whether or not this sum was charged up against any of those accounts? A No, inasmuch as we had not received on said date the amount that you are referring to.

Q You did not examine the books? A No, inasmuch as we did not receive on the date that you referred to, a check of such an amount.

Q So you went no further in making your examination of the three checks specified in the subpoena *duces tecum,* namely, the checks for $1,550,000, $1,450,000 and $200,000, than the scrap book about which you have just testified? A Yes, sir, and the slips of the Bank of Manhattan Company.

Q You did not examine the individual books about which you have just testified, to see whether or not there was any charge made against the account of any one of your depositors on the seventh day of March, 1910, for the sum of $1,450,000? A No.

Q You did not examine the books containing your accounts with out-of-town banks, to see whether or not a check for the sum of $1,450,000 had been charged? A No, sir.

Q Whom is the $1,500,000 charged to? A That I do not know.

Q Did you examine this scrap book for the eighth day of March, 1910? A No, sir.

*Mr. English.* We will temporarily suspend the examination of this witness.

*Mr. English.* I offer in evidence a copy of the certificate of incorporation of the Metropolitan Steamship Company of Maine, which is referred to in the amended bill as Maine Company No. 2, the paper being certified by the Secretary of State of Maine and being a duplicate of Exhibit G. attached to the amended bill.

(Marked Exhibit C. 15.)

JAMES McNEIL, being duly sworn according to law, on his oath says:

*Direct examination* by Mr. English.

Q Where is your place of residence? A 215 East Eighteenth street, Flatbush, State of New York.

Q Are you a citizen or resident of the State of New Jersey? A No, sir.

Q What is your business? A Assistant cashier of the Manhattan Bank.

Q What is the official name of that bank? A Manhattan Company.

Q The name of the bank is Manhattan Company? A Yes, that is the correct title.

Q But it is generally known as the Manhattan Bank? A Yes, or Bank of Manhattan Company.

Q You are assistant cashier of that bank? A Yes, sir.

Q How long have you been assistant cashier? A About ten years.

Q So that you were such in March or during the winter and late spring of 1910? A Yes, sir.

Q Have you any knowledge of a loan of money by your bank to the New York, New Haven & Hartford Railroad Company during

the early part of the year 1910? A I know there was such a loan; yes, sir.

Q Have you records of that, or copies of records which you have made, with you? A Yes.

Q Which, originals or copies? A Copies.

Q Made by you or under your direction? A Made under my direction by the bookkeeper.

Q From the books of the bank? A Yes.

Q Will you let me see what you produce? A Yes, sir. (Producing papers.)

*Mr. English.* You do not object to the copies—as to the form of proof?

*Mr. Faulks.* I don't know yet.

Q What is the paper which I hold in my hand? A A transcript of the account of the New York, New Haven & Hartford Railroad Company, commenced February 8, 1910, and ending on February 28, 1910.

Q And the figures there set forth generally indicate what? A The credits and debits from the ledger of the New York, New Haven & Hartford Railroad account on the books of the bank.

Q So that the right hand column of the paper indicates moneys credited to the New Haven's account? A Yes, sir.

Q And the left hand column indicates the debits, showing the money so paid out, is that correct? A Yes.

*Mr. English.* I offer in evidence the paper which the witness has produced; have you any objection as to the form of the proof? You may cross examine on it, if you want to, to satisfy yourself.

*Cross examination* by Mr. Faulks.

Q Do you know of your own knowledge that this paper contains a correct and accurate

transcript of the entries of the account of the New York, New Haven & Hartford Railroad Company with the Manhattan Company during the period mentioned, that is, from February 8, 1910, to February 28, 1910? A That is a pretty broad question. All I would know about that is, that I gave the bookkeeper special instructions to make out a careful detailed statement of the account, to have it compared with the original, and then to be presented to me for evidence in this court, and I have every reason to believe that the statement is a correct statement.

Q But you didn't take it from the books yourself? A Not myself.

Q And you didn't compare it with the books yourself? A No, I did not.

Q And your only reason for believing that it correctly shows the account that it purports to show is, the confidence you have in the man that you told to make the copy of the account? A Yes, sir.

*Mr. Faulks.* I object to this paper on that ground. If the bookkeeper who made the transcript should testify with regard to it, I would waive any objection to its being a copy rather than being a part of the original records of the bank, and I have no objection to your calling him today without notice, if you want to.

*Further direct examination* by Mr. English.

Q Who is the bookkeeper that made up that sheet? A Mr. Laughlin.

Q What is his first name? A I don't know his initials.

*James McNeil, further direct.*

*Mr. Faulks.* We will not require any new notice, but we reserve our right to object to the admission of the account.

*Mr. English.* I will ask to have the paper marked for identification.

(Statement of New York, New Haven & Hartford Railroad Company with the Manhattan company marked Exhibit C. 16 for identification.)

Q Referring to this paper, Exhibit C. 16 for identification, can you tell us whether or not any money was loaned by the Manhattan Bank to the New Haven railroad?

*Mr. Faulks.* We object to this on the ground that it is immaterial, irrelevant and incompetent.

A The Manhattan Bank made a loan of $1,000,000 on February 14th and credited the account of—

Q Credited the account of the New Haven? A Yes, sir.

Q Do you know through what officer of your bank the loan was negotiated?

*Mr. Faulks.* I make the same objection. The same objection will stand to this line of examination.

*Mr. English.* Yes.

A It must be made by the vice-president.

*Mr. Faulks.* The question is whether you know.

*Witness.* I can only know to the extent of what the rules of the bank are, that only the vice-president of the bank could make a loan of that nature.

*James McNeil, further direct.*

Q Who would be the vice-president, under the rules, who would have authority to make such a loan? A Mr. Henry K. McHarg and Mr. Jay; the president was absent at that time.

Q Who was the president? A Stephen Baker.

Q And he was away on February 14, 1910? A Yes.

Q Has Mr. McHarg, your vice-president, any connection with the New Haven railroad? A He was and is a director in the railroad, I believe.

Q He was at the time of this loan? A Yes, I think so.

Q Was your bank in the habit of making previous to this, loans to the New Haven railroad? A I think that that is possibly the first loan that we ever made.

Q And as between the two vice-presidents, Mr. Jay and Mr. McHarg, which of them negotiated this loan?

*Mr. Faulks.* I do not understand the witness says he knows.

*Mr. English.* If you know.

A Of my own knowledge I do not really know.

Q Is Mr. Jay a director of the New Haven railroad? A No, sir.

Q Did you, at our request, produce any cashier's checks and deposit slips, or anything of that character, during the period of February and March, 1910? A Yes, sir.

Q I show you a deposit slip which you have produced, dated March 5, 1910, indicating a deposit by Metropolitan Steamship Company of two checks, one of $200,000 and one of $1,450,-

000, totaling $1,650,000; was the money mentioned on that slip deposited in your bank to the credit of the Metropolitan Steamship Company? A The checks were; yes, sir.

Q I show you another deposit slip, dated March 5, 1910—

*Mr. Faulks.* It is understood that my objection stands to this?

*Mr. English.* Yes, I am satisfied with that arrangement.

Q (Continuing.) —indicating a check deposited by Metropolitan Steamship Company of $1,550,000; was that check credited to the Metropolitan Steamship Company's account? A Yes, sir.

*Mr. English.* I offer in evidence deposit slip for $1,650,000, dated March 5, 1910.

(Marked Exhibit C. 17.)

Also, deposit slip for $1,550,000, dated March 5, 1910.

(Marked Exhibit C. 18.)

*Mr. Faulks.* We object to the admission of these deposit slips in evidence, upon the ground that they or their contents are not material or relevant or competent to any issue in this case.

*Mr. English.* Any objection, Mr. Lovell?

*Mr. Lovell.* No, we have no objection.

Q Mr. McNeil, I show you a paid check, which you have handed me, dated March 5, 1910, to the order of Douglas Nicholson, for $1,400,000, signed apparently by two officers of your bank, and endorsed by Mr. Nicholson. Is that a cashier's check of the Bank of Manhattan Company? A It is, yes, sir.

*James McNeil, further direct.*

Q Was it issued on the date it bears? A March 5, 1910, yes, sir.

Q Who are the officers who signed the checks? A D. H. Pierson, cashier, and Pierre Jay, vice-president.

Q You know the signature of each of them? A Yes.

Q And the check was paid? A The check was paid.

*Mr. English.* I offer in evidence check dated New York, March 5, 1910, for $1,400,000, just produced by the witness.

(Marked Exhibit C. 19.)

*Mr. Faulks.* We make the same objection to the receipt in evidence of this check.

Q Do you know to whose account this check, Exhibit C. 19, was charged on the books of your bank?

*Mr. Faulks.* The question is whether you know or not.

A I know, but don't quite think that that question enables me to answer it intelligently. This check was not charged to any one's account.

*Mr. Faulks.* Wait, you have answered the question.

Q What entries were made with reference to that check on the books of your bank?

*Mr. Faulks.* Same objection.

A We received for that check a check of the Metropolitan Steamship Company, which check was charged to the Metropolitan Steamship Company and our cashier's check was given in exchange.

Q The check of the Metropolitan Steamship Company to the order of your bank? A Yes, sir.

*James McNeil, cross.*

Q Did you receive a check from the Metropolitan Steamship Company of that identical amount, or a larger amount? A That identical amount.

Q And the account of the Metropolitan Steamship Company to which you made those credits and charges was opened on March 5? A March 5, 1910.

Q And does either of these deposit slips, C. 17 and C. 18, indicate the deposit against which the cashier's check, C. 19, was drawn? A A check for C. 19 was drawn by the Metropolitan Steamship Company and against their account for $1,400,000.

Q And that account was opened for the first time on March 5, 1910, by the moneys deposited by these two slips, C. 17 and C. 18, is that correct? A Yes, sir.

Q Did you see the original checks which were deposited to the order of the Metropolitan Steamship Company as shown on these deposit slips? A No, sir.

Q Do you know who in the bank did? A The receiving teller would undoubtedly see them as it passed through his work.

Q And what is his name, please? A P. A. Messerole.

*Cross examination* by Mr. Faulks.

Q Mr. McNeil, do you know whether these deposit slips, C. 17 and C. 18, are the deposit slips of the Metropolitan Steamship Company of New Jersey, or the deposit slips of one of the Metropolitan Steamship Companies of Maine? A I do not; I can only indicate that by—just as they appear.

Q Do you know as a matter of fact that there were in 1910 three companies by the name of the Metropolitan Steamship Company? A I don't know that, no, sir.

Q Did you know that there was then one company of that name organized under the laws of the State of New Jersey, and two companies of that name organized under the laws of the State of Maine? A No, I did not. It is possible that our signature card would indicate—

Q I am asking only as to your own knowledge, and you know nothing more than the fact that these are deposit slips of a depositor in your bank by the name of the Metropolitan Steamship Company? A That is all.

Q You haven't made any examination of the records of the bank, to see whether the amounts shown on these deposit slips went to the credit of the same company or not, have you? A Yes, sir, I compared the records to that extent.

Q Do you know that the checks shown on these deposit slips both went to the credit of the same account? A Yes, sir.

Q But you don't know where the company having that account was incorporated? A No, sir.

Q Do you know whether or not the account to which the checks shown on these deposit slips were credited, was opened as a new account on the date they bear, that is, March 5, 1910? A The account was opened on that date, yes, sir, for the first time.

Q Have you any knowledge of that fact except such as you obtained from the entries made on these deposit slips in those words "new a/c?" A And from the ledger.

Q You have examined the ledger, have you? A Yes, sir.

*Mr. English.* I overlooked something on direct examination.

*Re-direct examination* by Mr. English.

Q I show you another sheet similar to Exhibit C. 16 for identification; please tell me what that is a copy of. A Transcript of the account of the Metropolitan Steamship Company on the books of the Manhattan company.

Q Between what dates? A March 5, 1910. and April 2, 1910.

Q And was that made in a similar manner as Exhibit C. 16 for identification was? A In the same way and by the same party.

Q By the same bookkeeper? A Yes.

*Mr. English.* I will have the account of the Metropolitan Steamship Company with the Manhattan company marked for identification.

(Marked Exhibit C. 20 for identification.)

Q Does Exhibit C. 20 for identification relate to the same account and the same depositor as is named in the two deposit slips Exhibits C. 17 and C. 18? A Yes, sir.

Q Does C. 20 for identification show the two deposits which are represented by those two slips? A Yes, sir.

Q At the head of the right hand column? A Yes, sir.

Q (*By Mr. Faulks.*) Does the right hand column show the deposits that went to that account, and the left hand column the checks drawn against it? A Yes, sir.

Q Does the Metropolitan Steamship Company have an account in your bank, or has it been closed? A I haven't looked that up.

JAMES McNEIL, recalled.

*Direct examination* by Mr. English.

Q Since you were on the stand have you produced the original signature cards of the account of the Metropolitan Steamship Company in your bank, Manhattan company? A I have, yes, sir.

Q I show you signature card dated March 5, 1910, bearing the signature Grover C. Richards, treasurer; is that the original signature card authorizing the bank to issue checks of the company signed by Grover C. Richards, treasurer? A Yes, sir.

Q In whose handwriting, aside from Mr. Richards' signature, is the card made out? A The name of the Metropolitan Steamship Company is inserted in the card by Mr. Jay, the vice-president of the bank.

Q You recognize his handwriting? A Yes.

Q The date "Mar 5?" A The date and the address of the account is in Mr. Wallace S. Johnson's handwriting.

Q I see an endorsement on the back of the card. A The endorsement on the back is also in the handwriting of Mr. Johnson.

Q At that time what was Mr. Johnson's position in the bank? A Transfer officer.

Q Is he living at the present time? A No, he died about six months ago.

Q You know his handwriting? A Yes.

*Mr. English.* I offer in evidence the signature of Grover C. Richards, treasurer, dated March 5, 1910.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 21.)

Q Just read the endorsement on the back of Exhibit C. 21. A "Introduced by Mr. Hemming, Mr. Billard & Mr. E. D. Robbins, *V. P.* N. Y. N. H. & H. Rd."

Q Is it customary to enter upon the signature card the person introducing the depositor? A We always insist upon that and will not take an account without it.

Q And the endorsement which you have just read on the back of Exhibit C. 21 indicates the persons who introduced Mr. Richards to the bank? A Undoubtedly, yes.

Q I show you another card, dated March 14, 1910, bearing the signature B. E. Case, treasurer; is that also an original signature card for the drawing of checks on the account of the Metropolitan Steamship Company? A Yes.

Q And the handwriting is whose, aside from the signature? A The handwriting of Mr. Johnson.

Q The gentleman you spoke of as now dead? A Yes.

Q And is there an endorsement on the back? A Endorsement in Johnson's handwriting.

Q Is the endorsement on the back in the same handwriting? A It is.

*Mr. English.* I offer in evidence the signature card of Mr. Case, dated March 14, 1910.

*Mr. Faulks.* Same objection.

(Marked Exhibit C. 22.)

Q Look at the endorsement on Exhibit C. 22 and tell me how it compares with the endorsement on Exhibit C. 21? A It is exactly the same.

Q Do you know who Mr. Hemming is; have you any acquaintance with him? A No.

Q Do you know who Mr. Billard is? A I have seen him, that is all, I don't know anything about him.

Q Do you know who Mr. E. D. Robbins is? A No, except to know he is vice-president of the road, or was.

Q Vice-president of the New Haven road? A Yes.

*Mr. English.* By consent of counsel copies may be substituted for the originals of Exhibits C. 21 and C. 22.

JAMES McNEIL, recalled for further

*Direct examination* by Mr. English.

Q At our request have you produced here from the Bank of Manhattan any document showing the charge to the Metropolitan Steamship Company of certified checks? A I have, yes, sir.

Q What is that paper which I show you? A That is a charge ticket to the Metropolitan Steamship Company of three of their checks that were certified by the bank, one for $1,600,000, one for $1,400,000 and one for $166,000.

Q Totaling altogether how much? A $3,166,000.

Q On what date were these checks certified, as appears from your slip? A March 5, 1910.

Q I see written on there "3 checks certified Mar. 5/1910, after proof posted General Ledger;" what does that mean? A We have what we call a certification book in which the checks are listed under the names of the different accounts, and that book is ruled off and closed

as quickly as possible after three o'clock, and when a check is presented for certification after that hour, it is done in the form of the slip indictated here, as the certificate book cannot be changed.

Q One of those checks which you certified, as appears from this slip, was $1,400,000; does that refer to the check Exhibit C. 19 of the same date, which I show you, to the order of Douglas Nicholson? A That check was given to the bank and in place of that we issued a cashier's check to Douglas Nicholson for $1,400,000.

Q Exhibit C. 19 which I show you appears to be a cashier's check to the order of Douglas Nicholson; is that the check which is referred to on this slip which you produce today as having been certified and charged to the Metropolitan Steamship Company? A No.

Q What check was certified as appears from the slip which you produce today? A The check of the Metropolitan Steamship Company for $1,400,000.

Q Do you know to whose order? A No.

Q Do your records show to whose order? A No, it would not show that; it presumably was to the order of the Bank of Manhattan, or we wouldn't have given our cashier's check.

Q When you say you would not have given up your cashier's check, you refer to the check Exhibit C. 19? A That check was given in place of the check for $1,400,000.

Q So the procedure was that someone turned in that check for $1,400,000, against which you drew the cashier's check to Mr. Nicholson, C. 19? A Yes, sir.

Q Exhibit C. 19 is the check which is referred to on this slip which you produce today as having been certified? A No, that is wrong.

Q Let us get it right; what is the explanation? A The Metropolitan Steamship Company drew their check for $1,400,000 and asked the bank—they must have asked the bank to give them in place of that the bank's cashier check, and they took the Metropolitan Steamship Company check, which must have been payable to the order of the bank, and gave them this check in place of it.

Q When you say "this check," you mean Exhibit C. 19? A Yes, in place of the check we had certified. I can explain that to you.

Q Go on and explain that a little more fully, please. A You might bring in your check, if you had an account—

*Mr. Faulks.* I object to the witness explaining what Mr. English might do, particularly if it involves a check for $1,400,000, and objects to his adding anything more than answering the questions.

*Mr. English.* You are entitled to explain your answer a little more fully. Please do so.

A (Continuing) The Metropolitan Steamship drew their check for $1,400,000.

Q To whose order? A I cannot tell that; it must have been either to the order of the bank or it must have been in negotiable form.

Q On what bank did they draw their check? A On the bank of the Manhattan Company.

Q And they asked you to certify that check? A That check was certified and after being certified they asked us to give them in place of that check our cashier's check to the order of Douglas Nicholson for a similar amount.

Q So then they made that check which you certified payable to your bank? A Exactly.

Q And against that check made payable to your bank thus certified, you drew the check C. 19? A That is the idea.

*Mr. English.* I now offer in evidence this slip which the witness has produced today.

*Mr. Faulks.* I want to cross examine before it is marked.

*Cross examination* by Mr. Faulks.

Q Mr. McNeil, you have in answer to Mr. English's questions, said that certain things must have been done; do you know anything more about the transaction than what is shown by this charge ticket and by the check Exhibit C. 19? A I have examined the books of the bank.

Q You know from this charge ticket, it being part of the regular records of the bank, that three checks were certified for the Metropolitan Steamship Company on March 5, 1910, don't you? A Yes, sir.

Q You know the amount of each of the checks so certified? A Yes, sir.

Q You know the aggregate amount? A Yes, sir.

Q What more do you know about these checks of your own knowledge, not from what you may suppose? A I have compared the note teller's work of that day and find that he received a charge to the Metropolitan Steamship Company of $1,400,000 and credited the cashier account of the bank with a similar amount.

Q That means, does it not, that a check for $1,400,000 was on that day certified for the Metropolitan Steamship Company? A Yes, sir.

Q And it also means that on that day a cashier's check of the Manhattan Bank was

issued on account of the Metropolitan Steamship Company? A Yes, sir.

Q You don't know to whom it was issued, do you? A I know to whom it was made payable; I don't know who received it.

Q That was this check Exhibit C. 19? A Yes.

Q That is really all you know about it? A I personally didn't carry on the transaction; I only know it from the records of the bank.

Q And that is all you know about it? A Absolutely.

*Mr. Faulks.* We object to the admission in evidence of the charge ticket, on the ground that it is immaterial and incompetent.

(Slip dated March 5, 1910, marked Exhibit C. 25, December 12, 1913.)

*Further direct* by Mr. English.

Q Look at Exhibits C. 17 and C. 18, which are deposit slips produced by you at the last taking of testimony which covered deposits to the credit of the Metropolitan Steamship Company for $3,200,000, and tell me whether it is against the fund represented by those two deposit slips, that these certified checks, as appears by Exhibit C. 25, were certified?

*Mr. Faulks.* Same objection.

A These amounts mentioned on the deposit slips were credited to the Metropolitan Steamship Company, and against that credit balance, the checks mentioned on the slip referred to, was certified.

Q Do you know on what bank the check for $1,550,000, as set forth on Exhibit C. 19, was drawn? A No, sir.

*James McNeil, direct.*

Q Was it a New York bank? A New York bank.

Q Some New York bank? A Yes, sir.

Q Can you tell me upon what banks the checks represented on deposit slip Exhibit C. 17 were drawn? A No, sir.

Q Can you say whether or not they were New York banks? A New York banks.

Q They were? A Yes, sir.

*Mr. English.* That closes the testimony under this notice.

JAMES McNEIL, sworn for complainant.

*Direct examination* by Mr. English.

Q You have already testified in this case? A Yes, sir.

Q It appears that you are assistant cashier of the Bank of Manhattan Company? A Yes, sir.

Q It already appears in your testimony that there was deposited in your bank a check for $1,550,000 to the order of the Metropolitan Steamship Company, and that appears on a deposit slip already in evidence as Exhibit C. 18; do you know on what bank that check was drawn?

*Mr. Faulks.* I submit the witness has already answered that question. That appears by reference to page 271 of the testimony.

*Mr. English.* The witness said it was drawn on a New York bank.

*Mr. Faulks.* He was also asked, "Do you know on what bank the check for $1,550,000, as set forth on Exhibit C. 18, was drawn?" and answered "No, sir."

Q I will ask you now if since your testimony which appears on page 271 was given, and which testimony was given in December last, you have been able to find out from the records of your bank on what bank this check for $1,550,000 was drawn?

*Mr. Faulks.* I object to that as immaterial and incompetent and on the further ground that it is not proper proof. If the witness has obtained information on the subject from the records in his bank, the records ought to be produced, and not merely his statement as to what they show.

*Mr. Ward.* Same objection.

A Yes.

Q How did you find that out?

*Mr. Ward.* Same objection.

*Mr. Faulks.* Same objection.

A When I gave my testimony I had every reason to believe that that check was a check—

*Mr. Faulks.* That isn't what you are asked.

Q I am asking you what books you looked into or what you did to find out on what bank that check was drawn? A I found the debit book of the bank, the general debit book of the bank.

Q What does that show generally?

*Mr. Faulks.* I object to that upon the ground that we are entitled to have the debit book.

*Mr. English.* I don't want the contents of it. Characterize the book.

*Mr. Faulks.* Don't state until you are asked the direct question and I have had an opportunity to object, on what bank any

particular check was drawn or is shown to have been drawn by the records in your bank.

Q Generally, what is that general debit book of the bank? A It was the debit book of what is known as the G to O ledger.

Q From G to O you mean deposits in the bank between those two letters of the alphabet? A Yes.

Q And that shows what, generally, with reference to those debits, what they have been charged with on the books of the bank? A Yes, sir.

Q And have you got that general debit book with you? A No, sir; Mr. Brown said I need not produce any books until required.

Q It is down at the bank, you can get it? A Yes.

Q And from your examination of that general debit book were you able to find out on what bank that particular check had been drawn? A Yes.

Q And did you find out? A Yes, sir.

Q On what bank did you discover that the check had been drawn?

*Mr. Faulks.* I object to that as immaterial, irrelevant and incompetent, and on the ground that this is not proper proof of the subject matter of the inquiry; we ought not to be compelled to take Mr. McNeil's oral evidence as to matters which it is claimed appear on the records of his bank.

*Mr. Ward.* Same objection.

Q Who keeps that general debit book? A The assistant of the bookkeeper of the G to O ledger.

*James McNeil, direct.*

Q What is his name, or what was his name at the time of the entry that you refer to? A That I cannot say.

Q Do you as assistant cashier of the bank have occasion to examine that book from time to time? A Only when I might want to ascertain something.

Q It is one of the regular books of the bank? A Yes, sir.

*Mr. Faulks.* It is one of the books that you kept?

*Witness.* No.

Q You don't keep any books at all? A No.

Q What other books or records of the bank did you examine into to ascertain on what bank that check had been drawn? A The G to O ledger.

Q Which is referred to in the general debit book? A Yes.

Q The one refers to the other? A Yes, sir.

Q Who keeps the G to O ledger? A We change our bookkeepers every six months, and I cannot answer that question.

Q And that G to O ledger is one of the regular books of the bank? A Yes, sir.

Q Any other books that you had to look into to find out that information? A Possibly what is known as the certification book.

Q It appears on Exhibit C. 17 that there was deposited to the order of the Metropolitan Steamship Company in your bank a check for $1,450,000, do you now know on what bank that check was drawn?

*Mr. Faulks.* Objected to as immaterial, irrelevant and incompetent, and I also call attention to the fact that the witness has heretofore testified that he did not know about this matter.

*Mr. Ward.* Please answer yes or no.

A Yes.

Q You have now ascertained? A Yes.

Q And did you ascertain from this general debit book and the ledger G to O? A And the certificate book, certification book.

Q These same three books gave you that information? A Yes.

Q Is the same thing true of the check for $200,000 which appears on Exhibit C. 17? A No, sir.

Q Have you any present knowledge where that $200,000 deposit came from?

*Mr. Faulks.* Same objection.

A I don't see how I can answer that without qualification. I know who made the deposit in the bank, but I don't know what the $200,000 represented.

Q Do you know on what bank the $200,000 check was drawn? A I have not been able to ascertain.

Q You do know that the books which you have mentioned show on what bank those two checks aggregating $3,000,000 were drawn? A Yes, sir.

Q And will you produce those three books for us before we adjourn today? A Yes, sir.

*Mr. English.* I will withdraw the witness for the present.

JAMES McNEIL, recalled for further

*Direct examination* by Mr. English.

Q Have you produced here the general debit ledger of the Bank of Manhattan Company covering the— A Individual ledger from G to O debit book.

Q Anything else? A And two certification books.

Q And those books cover what period of time, roughly? A Beginning in 1910.

Q You have March, 1910, here? A Yes, sir.

Q Turn to the general debit book and show us from that what there is in it which indicates on what bank the check for $1,550,000 as set up in Exhibit C. 18 was drawn?

*Mr. Faulks.* I object to that form of question; I think the proof ought to be the offer of any entries in these books upon which the complainant seeks to rely, so we can have proper opportunity to object.

Q Mr. McNeil, you have produced here the general debit book which you referred to this morning, referring to the G to O ledger? A Yes.

Q Have you turned to the page in that book which contains the entries which indicate on what bank the check for $1,550,000 referred to in Exhibit C. 18 is drawn? A Yes, sir.

Q Do you produce the page? A Yes, sir.

Q Is this it, which I call your attention to? A Yes.

Q And that is included in this book which is one of the books of the bank used in the course of business? A Yes.

Q Point out, please, the item or figures or writing in the book on the page of the book to which I refer, which shows the check in question.

*Mr. Faulks.* I object to the witness stating what the items are. I have no objection to his designating them by some identification mark, and then if you offer them I shall have an opportunity to enter a proper objection. I do not want him to

read into the record something which may not be admitted in evidence.

Q Just point out on that page the writing and figures which refer to this check, and which enable you to say from this page what bank the check was drawn on. A There is the check in question (indicating.)

Q You point to an item opposite which I will put the pencil mark "A?" A Yes.

Q Is there anything in the book which enables you to say upon what bank the check for $1,450,000, which is referred to in Exhibit C. 17, was drawn? A Yes. (Indicating.)

Q I will put the letter "B" opposite that. A Yes.

Q Is there anything else on this page before you to which we are referring, which has any relation to these two checks, other than those opposite which I have written the letters A and B? A No.

*Mr. English.* I offer in evidence so much of the page of the book produced by the witness, being the last page, headed March 5, 1910, of the general debit cash book, referring to ledger entries G to O, with the Bank of Manhattan Company, as contains the entries identified by the witness, and opposite which I have marked the letters A and B, and I include in that the name of the depositor.

Q What is that? (Indicating.) A The depositor.

*Mr. English.* The name of the depositor as well as the figures.

*Mr. Faulks.* I object to the reception of these entries in evidence, upon the ground that they are not material nor relevant nor competent, and upon the further ground

that the entries in the books are not proven, and even if proven, would not be evidence of the facts sought to be brought out. There is nothing to show that this book was kept by the witness, or under his direction.

*Mr. Ward.* Same objection.

*Mr. English.* Are you serious about this form of proof?

*Mr. Faulks.* Yes.

Q What is this lefthand column of this page referred to; what does that set up? A The customers of the bank as contained in that G and O ledger.

Q You mean the "depositor" by "customer?" A Yes.

Q And the column which adjoins that contains the amount of any given deposit? A The checks —withdrawal checks.

Q So that this page of this book shows the name of the depositor of the bank and the figures in the column adjoining shows the amount of the check which he drew on his deposit? A Yes, sir.

Q And the entry which we have referred to here and designated on the book A and B, referring to those two checks which have been mentioned, indicate that those checks for that amount were drawn by the depositor whose name appears immediately to the left in the next column? A Yes.

Q Whose handwriting are those entries in?

*Mr. Faulks.* The question is whether you know.

A I am pretty positive it was Mr. Bucklin.

Q And is he in the bank yet? A Yes, sir.

Q What are his initials? A Harry Bucklin; I don't know whether he has a middle initial.

Q What is his position in the bank now? A Certification clerk.

Q What was his position in March, 1910? A I am not positive just at this moment; I think possibly the same position.

Q Does this general debit book relate to certified checks only? A No, to uncertified checks.

*Mr. English.* Do you want me to produce Mr. Harry Bucklin?

*Mr. Faulks.* I don't think it is proven yet.

*Mr. English.* Will you consent to Bucklin being produced here as a witness without being named in the notice, or shall we come over again?

*Mr. Faulks.* I don't think I could consent to your amending the notice in that respect.

*Mr. English.* Then we will call him later. I offer in evidence now so much of the page of this book, being the last page, headed March 5, 1910, which relates to these two checks, and which sets up the name of the depositor who drew the checks, as follows:

*Mr. Faulks.* I renew my objection to the reception of these entries in evidence.

*Mr. Ward.* Same objection as when the offer was made before.

*Mr. English.* (Reading.)

| | | |
|---|---|---|
| "New England | $1,550,000 | A |
| | | $3,000,000" |
| Securities Co. | 1,450,00 | B |

Q I see, Mr. McNeil, that to the right of the two sets of figures representing the two checks is the total $3,000,000? A Yes.

Q That is simply carrying out the total of those two checks? A Yes.

*James McNeil, cross.*

Q And that is the practice as appears all the way through in this book? A Yes, sir.

Q From your knowledge of the bank and procedure in that bank, from what data or papers or books does the clerk who made these entries get his information?

*Mr. Faulks.* I object unless the witness has knowledge as to the source from which these particular entries were made. I do not think he is competent to testify.

*Mr. Ward.* Same objection.

Q Do you know? A Yes.

Q What is the source? A From the physical handling of the actual checks themselves.

Q Mr. Bucklin who made this entry had in his possession, or should have, under the procedure, the checks, when he wrote them up in there; is that the practice? A Yes.

*Mr. Faulks.* I submit the witness is not shown to have had any personal knowledge of the making of these entries, and I ask leave to cross examine at this time.

*Mr. Ward.* And as leading.

*Mr. English.* Very good.

*Cross examination* by Mr. Faulks.

Q Those entries are not in your handwriting, and none of them are? A No, sir.

Q Are you positive that they were made by Mr. Bucklin? A No. I said before I thought it was his writing, but I cannot be absolutely positive.

Q You cannot be sure of it? A No.

Q And different bookkeepers keep this book at different times, do they not? A Yes.

Q It is not always kept by the same bookkeeper? A We change our bookkeeping staff from time to time.

Q So that one set of men work on the same books at one time, and another set of men work on those books at still another time? A Yes, sir.

Q And these entries were not made by any one in your presence? A No, sir.

Q Or under your immediate direction? A Not other than on general instructions.

Q Those instructions simply go as to the way in which the books and records of the bank should be kept? A Yes.

Q And there were no directions given by you on that particular day? A No.

Q And at no other time, except when the books were opened? A The rules of the bank of course provide that these debit books must be written up from the checks themselves.

Q That isn't what I asked you. I asked you if you gave any directions with reference to these books, except such as you gave at the time they were opened? A Nothing except general instructions.

Q You personally don't know anything about the entries in this book of your own knowledge? A Not personally, no, sir.

Q You don't know whether the person who made the entries saw any particular checks or not, do you? A Not if that implies that I actually saw them do it.

Q All you know is as to the general rules of the bank with reference to such entries? A Yes.

*Mr. Faulks.* I renew my objection to the reception of this exhibit and move that the entries be rejected.

*Cross examination* by Mr. Ward.

Q Isn't it possible that in some cases those charges might be made from so-called charge

slips other than the checks themselves? A That is possible at times, yes, sir.

Q Or, as the result of verbal instructions given by some other officer? A No verbal instructions would cover that; it would have to be either the check or a ticket signed by an officer.

*Further direct* by Mr. English.

Q You say, Mr. McNeil, you are not positive whether Bucklin made the entry or not; have you a clerk in your bank named Harold Powelson? A Yes.

Q Do you know whether that is his handwriting? A They write very much alike, to a certain extent, but a glance at that led me to believe that was Mr. Bucklin's writing; it might be one of three.

Q Who are the three possible ones? A Mr. Bucklin, Mr. Rush and Mr. Powelson.

Q What is Mr. Rush's full name? A Walter A. Rush.

Q Do you know where he lives? A He lives somewhere in Jersey; he is an employe of the bank and lives in Jersey somewhere.

Q Do you know where Harold Powelson lives? A He also lives in Jersey.

Q Do you know where Harry Bucklin lives? A Also in Jersey.

Q Turn to the next book, namely, the ledger, which refers to those two checks which we are speaking of. A Page 1474 of the individual ledger.

Q And that shows the name of the depositor? A Yes, sir.

Q And it shows the amount of the deposits made by that depositor? A Yes, sir.

Q And it shows the amount of the checks drawn out on that account? A Yes, sir.

*James McNeil, further direct.*

Q And does it show the date of the deposit? A Yes, sir.

Q And the date of the withdrawal? A Yes, sir.

Q Does that ledger show the date when the account was opened? A Yes, sir.

Q So that that entry on page 1474 shows the name of the depositor and the date it opened the account? A Yes, sir.

Q The amount of money it put in? A Yes.

Q And the amount of money which it drew out and the date it drew it out? A Yes, sir.

Q And does that show these same two checks that we have been talking about? A Yes, sir.

*Mr. Faulks.* I object to that on the ground that it is irrelevant and incompetent, and on the further ground that the question is leading, and upon the further ground that the witness is not shown to have made these entries, or to have any personal knowledge of their subject matter.

*Mr. Ward.* I make the same objection and add the objection that the question calls for a conclusion.

Q How do the entries on page 1474 of this ledger compare with the entries on the page of the debit book already offered in evidence? A The same charge in the debit book is in the ledger and on the same date.

Q And it relates to the same account? A Same account.

Q Is the ledger posted from the debit book, or the debit book from the ledger? A The bookkeeper makes his charges from the checks themselves.

Q In each case? A In each case.

Q In the case of each book? A He turns them over to the assistant, unless there are a

large number of checks, when he will take the checks and compare them with the debit book and post the amount as appears in the book.

Q In this particular case— A He would post these from the checks; that would be his instructions.

Q So, if the system would be carried out, the man who made the entries in the ledger on page 1474 would write direct from the checks themselves, is that correct? A Yes.

Q And the same would be true with the man who made the entries in the debit book? A Yes.

*Cross examination* by Mr. Faulks.

Q Isn't it a fact that he may have written the entries in each book from a charge slip? A No, not in that case.

Q You said so with reference to the entries in the debit book; the entries in the debit book are sometimes made from charge slips rather than the checks themselves? A That is true, but the bookkeeper must put the letter "I" opposite each ticket.

Q In which book? A The ledger; that is his positive instructions; I wouldn't say he always does it.

Q The entries in this ledger were not made by you? A No.

Q Nor under your direction? A Simply as an officer of the bank, general instructions.

Q You didn't see these particular entries made? A No.

Q And you don't know anything more about them than you do about a thousand or ten thousand of other entries? A Not a thing.

*Re-direct* by Mr. English.

Q In whose handwriting are the entries in this ledger, page 1474? A F. T. Garretson, Somerville, New Jersey.

*James McNeil, re-direct.*

Q What was Mr. Garretson's position with the bank in March, 1910? A Individual bookkeeper.

Q You are sure that is his handwriting? A Yes, sir.

Q Do you know what "F" of his initials stands for? A No.

Q I see on this ledger account, page 1474, an entry "C/o of" something; what is that? A Care of the Corporation Trust Company, Jersey City.

Q That is put there for what purpose? A The address of any communications of that account.

Q Was that put there to indicate the address and the person to whom any communications on behalf of this depositor should be made? A No.

Q For what purpose, then? A Put there as the address, as far as we knew, of the depositor.

Q Care of the Corporation Trust Company? A Jersey City.

*Mr. English.* I offer in evidence the entry which has been referred to and identified by the witness on page 1474 of individual ledger No. 86, G to O, of the Manhattan company, which entry is as follows:

New England Securities Co. C/o Corp. Tr. Co. J. City

| | | | | | |
|---|---|---|---|---|---|
| Mar 5 | To | 1,450,000 | Mar 5 | By Cash | 1,500,000 |
| | | 1,550,000 | | | 1,500,000 |
| | | 3,000,000 | | | 3,000,000 |

*Mr. Faulks.* We object to the reception of this exhibit upon the same ground as we did in the case of the entries from the debit book.

*Mr. Ward.* Same objection.

*James McNeil, re-direct.*

Q Please look at Exhibit C. 17 and Exhibit C. 18 in this case, both of which were originally produced by you, and tell me what relation the check on Exhibit C. 17, for $1,450,000, and the check on Exhibit C. 18, for $1,550,000, bear to the entries in the debit book and the ledger which have been referred to by you just now in your examination?

*Mr. Faulks.* I object to that upon the ground that the evidence shows that the witness is not qualified to answer this question, because he has no personal knowledge of the subject matter at all, and has not shown that any course of business that may have been adopted by the bank or ordered by the bank whose books these are, was followed in connection with the making of these entries. I think it is perfectly apparent that he knows nothing about it, and that he has simply produced these books from the bank, and that unless there is evidence in support of the entries by someone who has knowledge with regard to them, or the circumstances under which they were made, not only should the entries be rejected, but this question should not be pressed.

*Mr. Ward.* I object also on the ground that it calls for an opinion or conclusion on the part of the witness.

A To the best of my knowledge and belief they are the same transactions.

Q Same checks? A Same checks.

Q It appears that the original deposit in the account as stated on page 1474 of the ledger were cash, is that correct? A I presume that

that was a mistake; it might have been either cash or checks.

Q So the mere fact that it shows by cash, it does not necessarily follow that it was cash? A No.

Q Have you any knowledge from your examination of the books, whether those entries were in fact by cash or check? A No.

Q Have you any knowledge on the subject at all? A I believe they were checks, but I am not positive.

*Mr. Faulks.* That is not responsive.

Q I am referring to the credit entries. I call your attention to the credit entries on page 1474 of the ledger, which you produce, and I ask you whether you know whether those deposits were by check or by cash? A I will have to answer no.

Q You don't know? A No.

Q Are there any books in the bank or anybody in the bank who can tell us that? A The teller, I imagine, could.

Q And what is the teller's name, or was his name at the time of these entries March, 1910? A P, A. Messerole.

Q What does "P" stand for, Peter? A Peter; he also lives in Jersey; Ridgefield, New Jersey.

Q And he was the teller who handled these deposits? A He was the teller at that time; he might have been one of two tellers; his assistant might have handled them.

Q Who is the other one? A Harold Powelson.

New Jersey State Library

Q So either Mr. Messerole or Mr. Powelson could enlighten us as to whether those were checks or cash? A Yes.

Q Is there any other book or record in the bank besides this ledger which would show whether it was check or cash? A Yes.

Q What? A The teller's book would show whether he handled that amount of cash that day.

Q And would that show whether it was handled as cash or as a check? A Yes, sir.

Q Who keeps that teller's book? A It is kept in his own department during the day.

Q Is it kept by Mr. Messerole or Mr. Powelson? A By either one.

Q And that shows whether this deposit was check or cash? A Would, I think.

Q Is there anything else in the bank which would throw any light on that question, any other record? A If you ask me whether those checks were cash, the cash book will show if it was cash; if they were checks, they must have gone through our debit books of that day, or must have been checks on other banks.

Q Who keeps the cash book which would show if this was cash? A Kept in the receiving teller's department.

Q Is that Messerole? A Messerole or Powelson.

Q Is the teller's book the same as the cash book, or is that a separate book? A It is a separate book; there are records would show.

Q So these tellers kept two records, one called the teller's book and one the cash book? A They check the cash each day; the slips of that day would show whether they had this amount of cash or whether they didn't.

*James McNeil, re-direct.*

Q The deposit slips? A The teller's proof slips.

Q They keep a set of proof slips? A Each day, yes, sir.

Q And they would show whether or not this was cash or check? A Yes, sir.

Q And then besides that, the teller's book is an independent book? A Independent book of his proof, of all the work he does during the day.

Q Is the practice to make out the slips as the money comes in and write it up in the teller's book afterwards, or is the teller's book written right along? A He checks his deposit slips with the cash that appears on them and balances his cash at the close of the day's accounting, but the deposit slip would invariably show.

Q When you say the deposit slip, you mean the depositor's slip? A Yes.

Q Is that the same thing that you referred to when you talked about the proof slip? A No, that is entirely different.

Q That is made by him? A Yes.

Q In addition to that, you have the teller's book? A Yes.

Q Are those depositor's slips still in existence? A I don't think they are.

Q What about the proof slips? A I cannot say as to that either.

Q What about the teller's book? A That is probably there.

Q Is there any record in that bank which would show on what bank those checks, if they were checks, were drawn? A No, nothing.

Q Do you know as a matter of fact on what bank they were drawn?

*Mr. Faulks.* He has already said he doesn't know except what the books show.

A No, I do not.

Q Who does know in your bank? A Nobody.

Q Is there no way to find out? A I don't know just how you would do it.

Q Do you say that it is not possible, in all the system of the books of the bank, to trace up the bank upon which those two checks were drawn before they were deposited in your bank? A Yes; that is a different question.

Q That is the question now. A All our checks that are drawn on other banks are listed on what we call the Clearing House sheets.

Q So that any check received by your bank and drawn on another bank, is listed by you on a Clearing House sheet? A Listed by the teller.

Q Who is the teller that does that listing? A Messerole or Powelson, or his assistants.

Q How many has he got? A Half a dozen.

Q And under what date would this list for the Clearing House be made up for a check which was deposited on March 5, 1910, having in mind that March 5, 1910, was a Saturday? A March 5th.

Q It would be dated that day? A Yes.

Q And sent to the Clearing House when? A Morning of the next business day.

Q That would be Monday, the 7th, in this case? A Yes.

Q And what is that, a long typewritten list, giving the amounts of the checks? A Yes.

Q And does that Clearing House list give the name of the bank on which the check was drawn? A They are all listed by the individual banks, all separated by the—

Q You set up the name of the bank and then you put under that all the checks drawn on that bank? A Yes.

*James McNeil, re-direct.*

Q You keep a duplicate of those lists in your bank? A No, not when the teller proves.

Q Is there a duplicate of that list as referring to these checks? A No, sir.

Q Is there any duplicate record in your bank at all? A No, sir.

Q So you have to go to the Clearing House to get that? A Have to go to the various banks to which the checks were sent.

Q Does your bank keep any book which shows the aggregate of the claims filed with the Clearing House on any business day against each bank? A Yes.

Q Have you got a book or record which shows the aggregate of the claims filed with the Clearing House on March 7, 1910? A Yes.

Q Have you that book with you? A No, sir.

Q What is the name of that book? A I should call it the Clearing House balance book.

Q For March, 1910? A Yes.

Q Who keeps that book? A The check clerk.

Q What is his name? A Mr. Vail, at the present time.

Q This young man here? A Charles F. Vail.

Q Is he a Jersey man, too? A Yes.

Q Have you ever examined that Clearing House balance book? A I have for the period referred to, yes, sir.

Q Do you know what the aggregate of the checks for March 7, 1910, was? A The total?

Q The total which your bank filed with the clearing house on March 7, 1910? A I could give you the estimated amount.

Q Can you tell us whether the totals were—how much in excess of $3,000,000 they were?

*Mr. Faulks.* I object; that is not the proper way to prove that account; the account ought to be produced and offered, and not the recollection of the witness as to the estimated amounts.

Q That Clearing House balance book, as I understand it, shows the names of the various banks on which checks were drawn, on which checks were deposited in your bank on any given date? A Yes.

Q And the record for March 7, 1910, ought to show the bank on which these two checks for $1,500,000 each, assuming they were checks, were drawn; is that correct?

*Mr. Ward.* Objected to; the witness hasn't told us how that record is kept.

*Mr. Faulks.* You don't keep those books?

*Witness.* No.

*Mr. English.* He knows the procedure of the bank; he is assistant cashier.

A The Clearing House book will show the total of checks on the various banks sent by us to the Clearing House for redemption on the morning of the seventh of March.

Q When was this account which we have referred to, which appears on page 1474 of the individual ledger No. 86, opened?

*Mr. Faulks.* I object; the account speaks for itself, and the witness known nothing about the matter.

Q Do the dates on that entry, on page 1474, show the date the account was opened and the date it was closed?

*Mr. Faulks.* Objected to on the ground that the witness has no personal knowledge of the subject matter at all.

*James McNeil, cross.*

A Yes.

*Mr. English.* Cross examine.

*Cross examination* by Mr. Ward.

Q Assuming that the two items on the credit side of that account were checks, and assuming that they were checks drawn on banks other than banks in New York City, would they go through the Clearing House? A No.

*Mr. English.* It is only in case the bank is a New York bank that this Clearing House record is of any value?

*Witness.* Yes.

*Cross examination* by Mr. Faulks.

Q You said you couldn't tell from this entry on page 1474 of the individual ledger, whether the words "By cash" meant that those deposits were by cash or by checks? A As you are holding me down simply to positive knowledge, I had to say that I didn't know.

Q Do you enter all checks in that ledger under the caption "By cash"? A No.

Q So that if those entries really represented checks instead of cash, then the use of those words "By cash" was a mistake? A That word "cash" was superfluous absolutely, I am sure.

Q It doesn't show the real fact? A No.

Q If it was cash, would the entry be "By cash"? A No, it would simply mean the total of the deposit; there should have been nothing there whatever.

Q So, whether the deposit was made by check or by cash, if the proper practice had been followed out, there would be no words at all, only the figures? A That is all.

*James McNeil, re-direct.*

Q And that is one of the cases where the rules or course of business of the bank were not followed? A I wouldn't say that. The term "cash" there might, in general banking practice—whether it was check or cash, would be properly classified as cash to the depositor.

Q But it is not customary to make any entry of that kind whether it is a check or cash deposit? A No.

Q And it is not one of the general rules of the bank to do so? A I don't know that we had any rule regarding a matter so insignificant as that. It is simply a bookkeeper's judgment in putting that in there.

Q Then he had discretion to use his judgment, did he? A We have to do that to some extent.

Q Would he do that without consulting you? A I would construe the word "cash" there as immaterial.

Q Did he have any instructions on the subject from you? A On the question of putting "cash" there?

Q Yes. A Absolutely none.

Q So there was no rule of the bank covering that? A No.

Q But the usual practice was not to make any such entry as that? A Just leave it blank, yes, sir.

*Re-direct* by Mr. English.

Q Did he have instructions from anybody that you know of, with reference to writing "cash" in there? A No.

Q Is it usual or ordinary in your practice to get a deposit of $3,000,000 in cash?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A Very unusual.

Q If such a thing happened do you think you, as assistant cashier, would be apt to know about it?

*Mr. Faulks.* Same objection.

A It wouldn't worry us very much. We had $54,000,000 the other day in one deposit.

Q In cash? A In cash.

Q Suppose that these checks which went to make up these deposits were drawn on banks out of New York, would you have a record of that? A Yes.

Q What kind of a record would that be in? A It would be in the foreign bank ledger.

Q Who kept that in March, 1910? A Either Mr. Shier or Mr. MacIntosh.

Q What is Mr. Shier's full name? A I don't know.

Q What is Mr. McIntosh's full name? A Walter; also of New Jersey.

Q Whereabouts? A I don't know; some new place.

Q Where does Mr. Shier live? A New York.

Q Do you know as a matter of fact whether these checks were drawn on out of town banks or on banks which were in the Clearing House? A From absolute knowledge, no.

Q As an officer of the bank do you know? A As an officer of the bank, I believe they were not.

Q Were not what? A Were not on out of town banks.

Q Your answer is that they were drawn on banks that are in the New York Clearing House?

*Mr. Faulks.* His answer is he has no personal knowledge on the subject.

A No.

*James McNeil, re-direct.*

Q What are your functions as assistant cashier of the bank with reference to oversight of the books of the Bank of Manhattan? A I have the same authority as the junior officer of the bank.

Q We don't know what that is. A General oversight of the whole accounting of the bank, as to booking, &c.

Q Are you one of the officers responsible for the accuracy of the books? A Yes.

Q In a general way? A Yes.

Q Do you overlook those books from time to time, to see whether they are being accurately kept? A Yes.

Q Did you ever in the course of business look over this account on page 1474 of this ledger that we have been talking about? A I cannot recall that I ever did.

Q Do you do enough overlooking or looking over to satisfy yourself that the books are kept according to the requirements of the rules of the bank?

*Mr. Faulks.* Objected to as irrelevant; it appears this particular entry was not made in accordance with the usual practice.

A I do not consent that it is a deviation; I think the entry is perfectly correct. The deposit is cash whether it is cash or checks.

Q Is there a head bookkeeper in your bank? A Yes, and no; our general bookkeeper is supposed to be the most advanced bookkeeper, but we have no head bookkeeper as such.

Q Who is the man who is directly responsible for the entries in the books by the various assistants in the bank? A The bookkeepers are strictly responsible to the officers of the bank

for their ledgers and balance their ledgers so frequently that there are no material errors in them.

Q You refer to this ledger now before us? A Yes.

Q To what officer of the bank are those bookkeepers responsible? A To the cashier first.

Q What about the assistant cashier? A I rank next, I suppose.

Q So to that extent he is responsible to you? A Yes, he is responsible to every officer of the bank.

Q What was the name of this general bookkeeper in March, 1910? A I don't know; I cannot tell without looking at the ledger.

Q Who is at the present time? A Mr. Shier.

Q What banks are affiliated with the Clearing House, all the banks in New York City? A Not all; all the larger banks are.

Q Is the National Bank of Commerce a member of the Clearing House? A Yes.

Q Is the National City Bank a member of the Clearing House? A Yes.

Q And your bank is a member of the Clearing House? A The second oldest member.

Q Was your bank doing business through the Clearing House with the National Bank of Commerce and the National City Bank in March, 1910? A We sent checks drawn on the Commerce for redemption through the Clearing House, which is the same thing.

Q Is there any other account of this depositor which appears on page 1474 of this ledger in your books? A Not so far as I am aware.

*James McNeil, re-direct.*

Q That is the sole account which it ever had in your bank? A So far as I know.

Q Are there signature cards to that account which appears on page 1474 of this ledger? A Yes.

Q Do you know who introduced the depositor? A I cannot give all the names.

Q Give us some of the names.

*Mr. Ward.* Objected to as immaterial and irrelevant.

*Mr. Faulks.* Same objection, and we object to the testimony unless the witness says he has personal knowledge as to who the introducers of the person or company opening this account were.

A I cannot recall the names just at this moment.

Q Have you ever examined the signature card? A Yes.

Q Did that have on it the names of the introducers? A Yes.

Q When did you first examine that signature card? A I saw it when the account was opened, and saw it again yesterday.

Q Did you have anything to do with the opening of that account? A I was in the bank at the time.

Q You saw it again yesterday? A Yes.

Q The same card? A Yes.

Q Tell us who, to your recollection, were the persons who introduced this account to the bank.

*Mr. Faulks.* He says he has no recollection on the matter.

Q You don't remember the names now? A Mr. Hemingway was one of them.

*James McNeil, re-direct.*

Q Can you name any other; Mr. Billard? A I am not sure; I really cannot say.

Q Was Mr. Robbins? A He was one of them.

Q Mr. E. D. Robbins? A Yes.

Q And Mr. Hemingway? A Yes.

Q What is his name? A I don't recall it at this moment.

Q Does that appear on the signature card, the full name, or just Mr. Hemingway?

*Mr. Faulks.* I object; the cards ought to be produced, if that is the source of the witness's knowledge.

Q Do you remember meeting these gentlemen when this account was opened? A I probably saw them in the office.

Q It was right in your office that the thing occurred? A Yes.

Q Who was authorized to sign checks on that account?

*Mr. Faulks.* Objected to as immaterial and incompetent.

A I don't recall; that will all appear on the card.

Q I now show you book which has just been produced from your bank; what is it? A. Statement of checks sent by the Manhattan Bank to the New York Clearing House for redemption.

Q When? A During 1910.

Q Any particular date on the page to which I direct your attention? A Including March 7, 1910.

Q You have before you now the page for Monday, March 7, 1910, showing the names of the banks and the total amount of checks drawn on those banks, which were sent by your bank

through the Clearing House on that date? A Yes, sir.

Q I call your attention to the entry for the checks sent the National Bank of Commerce, in this book which you produced; just explain those entries.

*Mr. Faulks.* We object to this as immaterial and incompetent.

A This item of $243,609.54 would be the total of the note teller's work on the close of business on March 5.

Q Has he anything to do with checks? A Yes.

*Mr. Faulks.* You didn't keep this book?

*Mr. English.* No, he is telling us the practice.

A (Continuing.) The amount of $1,524,563.58 would be the total of the receiving teller's work at the close of business on March 5, and the items that you see listed to the right here—various listings—are checks that we received by mail on the morning of March 7, in time to send in to the Clearing House at ten o'clock.

Q And this item of $1,524,563.58 represents the aggregate of the checks which were deposited at the teller's window, drawn on the National Bank of Commerce, is that correct, on March 5, 1910?

*Mr. Faulks.* I object on the ground that this witness is not competent to prove that, the book not having been kept by him or under his immediate supervision, and it having been stated before that he is simply being asked as to the usual practice. I submit that he has no knowledge which qualifies him to testify as to any particular entry in

the book, or as to its accuracy. The book is not proved.

*Mr. English.* I will amend that by saying that under the practice it ought to represent that.

*Mr. Faulks.* Objected to as immaterial and incompetent.

A It is correct.

Q Who do you say is the man who made these entries in this book? A I think the figures here are Vail's.

Q The figures in the column showing the checks received by mail? A Yes.

Q In whose handwriting are the figures which are supposed to show the aggregate of checks received at the teller's window? A Mr. Vail himself or one of his assistants.

Q Who are his assistants? A It might be Lanning or it might be one of two others.

Q What is the aggregate of the total amount of checks including the note teller's entries, the checks deposited at the window and the checks received by mail, which went to the Clearing House as drawn on the National Bank of Commerce on March 5, 1910?

*Mr. Faulks.* I object, the witness has shown no qualification to answer that question; he does not know about this book, and the book has not been proven; he has no personal knowledge.

*Mr. Ward.* Objected to, as immaterial and irrelevant.

A $1,991,901.51.

Q And that is supposed to show, if this book is accurate, the aggregate amount of checks

which were deposited on March 5 and went to the Clearing House on March 7, 1910?

*Mr. Faulks.* Same objection.

A That is right, and that book is accurate.

*Mr. Faulks.* I move that the last part of that answer be stricken out.

Q You say you know the book is accurate; is there any penalty under the Clearing House rules for any inaccuracies?

*Mr. Faulks.* I object to that as immaterial and incompetent.

A There is a penalty for all errors against the various banks that make mistakes through the Clearing House work.

Q What is that penalty?

*Mr. Faulks.* Same objection.

A A fine of $5, and the ruination of the man who makes it.

Q What do the slips which go to the Clearing House show as compared with the entries now in this book that we are talking about?

*Mr. Faulks.* Objected to as an improper question; the slips ought to be produced.

Q I mean the slips generally under this Clearing House practice.

*Mr. Faulks.* We ought to have the slips produced and not be compelled to accept the conclusion or judgment of this witness.

A The slip for the National Bank of Commerce on that day would have each check listed, so that when they were added up for the receiving tellers and for the note tellers, they would show the totals mentioned on this book.

Q So, if the thing was done right, that slip which went to the National Bank of Commerce ought to show the individual amount of each check which would aggregate your $1,991,901.51? A Yes.

*Mr. Faulks.* I object on the ground that the witness has not shown that he has any knowledge of the slips or of this book.

Q Point out where the National City Bank appears in this book. A (Witness does so.)

Q Just explain the set of figures as you did in the other case. Is there the note teller's entry? A Yes.

*Mr. Faulks.* I make the same objection to these questions.

*Mr. English.* Yes.

Q Under that is there the aggregate of the checks received at the receiving teller's window? A Yes.

Q And that amounts to—assuming this book is correct—how much? A $1,854,151.42.

Q And to the right of that is a column containing a set of figures which I assume represent the checks received by mail? A Yes, or adding on the morning's work between nine and ten o'clock, Monday morning, March 7.

Q What is the total aggregate of all the checks turned in to the Clearing House as having been received by your bank from the National City Bank and sent in on March 7, 1910? A $2,371,141.22.

*James McNeil, re-direct.*

Q And does the slip which went to the National City Bank, or should the slip which went to the National City Bank, show the detailed amount of all these checks aggregating the figure you have last given? A Yes.

Q Referring to the pages on this book which you say relate to Monday, March 7, 1910, give me the names of any banks other than the National Bank of Commerce and the National City Bank, where the aggregate of checks turned in exceeded, or was as much as $1,500,000.

*Mr. Faulks.* Objected to on the ground that it is immaterial and incompetent, and on the further ground that this book is not proven, and that the witness knows nothing about the transaction which it purports to show. I submit that this is an improper way of trying to prove facts as to which this witness has no knowledge.

A There are no other amounts equal to the figures stated.

Q You mean there are no other banks where the aggregate was as much as $1,500,000?

*Mr. Faulks.* Same objection.

A Yes.

Q What man in your bank made entries on these two pages covering March 7, 1910? A That belongs to the check clerk department.

Q Who is the head of that department? A Charles F. Vail.

Q He is responsible for this book? A Yes.

*Mr. English.* We offer in evidence the two pages of the Clearing House book covering the entries of March 7, 1910, which have been referred to by the witness.

*Mr. Faulks.* We object to the reception of these pages upon the ground that they have not been proved, and on the further ground that they and their contents are irrelevant and incompetent.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 101.)

(It is agreed that the witness shall give to the Master a true copy of so much of the entries on Exhibit C. 101 as cover the account of the National City Bank and the National Bank of Commerce, and that those copies shall have the same force and effect as the original exhibit.)

*Mr. Faulks.* All objections heretofore made to the original, or as to proof of any matters contained therein, being reserved.

*Mr. Ward.* Same objection.

Q The book, Exhibit C. 101, is officially endorsed "Statement Book 1910 Manhattan Company," is that correct? A Yes.

Q And you know it generally as the Clearing House balance book? A Clearing House statement book.

Q You have produced here a couple of books called "Certified Check Debits;" do they in any way relate to these checks for $1,450,000 and $1,550,000 which have been discussed today? A No.

Q Have you produced the signature card of the depositor whose name appears on page 1474 of this ledger already in evidence? A Yes.

Q Produce it, please. A Yes, sir. (Producing card.)

Q Is this the signature card which you show me? A That is the signature card, yes, sir.

*James McNeil, re-cross.*

Q And does it contain entries on the back of it? A The names of the introducers of this account.

Q You were present when this card was made out in your office? A Yes.

*Mr. English.* I offer the card in evidence.

(Marked Exhibit C. 102.)

*Re-cross examination* by Mr. Faulks.

Q In whose handwriting is this card? A The top writing, the name of Mr. Jay, the vice-president's writing.

Q The name of the— A New England Securities Company.

Q The name of the depositor is in the handwriting of Mr. Jay? A Yes.

Q And in whose handwriting is the name of the treasurer? A I presume his own.

Q And in whose handwriting is the address, Corporation Trust Company, N. J.? A Walter S. Johnson.

Q What is he—Walter S. Johnson? A He was with us a great number of years and died some time ago.

Q Do you know whose handwriting the entries on the back of the card are? A Mr. Walter S. Johnson's.

Q You say you recollect being present at the time this account was opened? A I was in the bank at the time.

Q Do you recall the account being opened? A I do.

Q Do you recollect seeing the gentlemen there at that time whose names appear on the reverse side of this card? A I wouldn't swear that I do.

*James McNeil, re-direct.*

Q I only want your recollection. A I saw these gentlemen there; I wouldn't swear whether all these gentlemen were there or not.

Q You didn't have the actual handling of the opening of this account for the bank, did you? A No, that was done through Mr. Jay.

Q What was Mr. Johnson's position in the bank at that time? A He was transfer clerk.

*Mr. Faulks.* I object to the reception of this signature card in evidence, both upon the ground that it is incomeptent and immaterial, and on the further ground that it is not proven.

*Mr. Ward.* Same objection.

*Re-direct* by Mr. English.

Q How far is your desk from Mr. Jay's desk, or was it at that time? A Three or four feet.

Q So you had every opportunity to see the people he was talking with? A Yes.

Q Was it the practice of the bank at that time to endorse on the back of the signature card the names of the introducers of the account? A It was, yes, sir.

Q Would they write on the name of a man who would not appear as an introducer?

*Mr. Faulks.* Objected to on the ground that it is not a question of what they would do; it is a question of what they did do and what the witness knows.

Q Was it the practice at that time to write on the back of a signature card as an introducer a person who did not in fact appear as such? A No.

Q Had you ever met Mr. Billard before that? A I have never met him.

Q Do you know him when you see him? A I know him by sight.

Q Do you know his first name? A No, I do not at this moment.

Q Had you ever met Mr. Hemingway before that? A No.

Q Do you know him by sight? A I may by sight.

Q Do you know his name? A No, sir.

Q The name written here looks as if it spelled "Hemming;" was that the name of the man or what was his name? A It is Hemming; I will have to stand by the card.

Q As far as your recollection goes, who was the person who appeared other than Mr. Billard and Mr. Robbins?

*Mr. Faulks.* He does not say that he recollects that anybody appeared.

A I said I saw two or three gentlemen in the bank when the account was opened, and I knew to a certain extent who they were, but I was not introduced to them.

Q Did you hear their names announced? A I may have done that, but it is a long while ago.

Q Did you hear the name of Mr. Hemingway announced? A I wouldn't say.

*Mr. Faulks.* You cannot recollect at this late date?

*Witness.* No.

Q Do you know anybody by the name of Hemming? A No.

*Mr. English.* I offer in evidence the authorized signature card of the New England Securities Co.

*James McNeil, re-direct.*

"AUTHORIZED SIGNATURES OF
NEW ENGLAND SECURITIES CO.
For THE MANHATTAN COMPANY.

President.
Vice-Pres't
Vice-Pres't
George A. MacIntosh Treasurer
Secretary

Date, Mar. 5, 1910. Address, Corporation Trust Co., N. J."

Endorsed on back:
"Introduced by Mr. Hemming, Mr. Billard & Mr. E. D. Robbins, Vice Pt. N. Y. N. H. & H. R. Co."

Q Do you know whether these two checks for $1,450,000 and $1,550,000, which were drawn on this account, were certified checks or not?

*Mr. Faulks.* I object; the evidence does not show that there were any such checks, and I notice counsel is pointing to entries on page 1474 of the individual ledger, which entries we contend have not been properly proved.

*Mr. English.* I do point to page 1474 and refer to those two checks that are there set out on the debit side, and my question is whether or not he knows whether they were certified checks.

*Mr. Faulks.* I submit that there is nothing in the evidence to show that the witness knows that those entries are entries of any checks or relate to any checks, and further, that the evidence shows that he does not know what those entries were; they are not proven.

A They were not certified checks.

*James McNeil, re-direct.*

Q I call your attention to Exhibit C. 20, which is a statement of the account of the Metropolitan Steamship Company with your bank, from which it appears that on March 5, 1910, there was drawn out of that account checks aggregating $3,166,000; have you any book here to show whether or not any of those checks were certified checks? A Yes.

*Mr. Faulks.* I object to that as immaterial and incompetent.

Q You produce here two books, one marked "Certification No. 111, from April 6, 1909, to April 13, 1910," and another marked "Certification No. 112, from July 19, 1909, —;" are they the books to which you referred in your last answer? A Yes.

Q Turn to the page in either of those books which show any certifications of any of the checks which went to make up the aggregate of $3,166,000 on March 5, 1910, as appears from Exhibit C. 20. A The books show the checks, yes.

Q Have you turned to the proper page? A Yes.

Q What is the page in book "Certification No. 111?" A It is under date of March 7, 1910; the pages are not numbered.

Q In whose handwriting is that page which you last referred to? A I cannot remember all these things; I think that is Lanning's; I wouldn't swear to it.

*Mr. Faulks.* Are those entries all in the same handwriting?

*Witness.* No. There are three or four men who write almost identically alike.

Q This page which you refer to has a double set of columns; are you referring to the one on

the extreme left hand of the page, under date of March 7, 1910? A Both columns refer to the same thing, yes, the left column.

Q Point out the entry or entries on this page before us which shows any checks which were included in that aggregate of March 5, 1910, as shown on Exhibit C. 20?

(Witness does so.)

Q The entry reading:

"Metro. SS Line 1,600,000

166,000 1,766,000"

What does that entry refer to?

*Mr. Faulks.* I object to that upon the ground that this witness is not shown to have kept these books, nor is it shown that they were kept under his direction or supervision; he says that they are in the handwriting of different persons, and I understand him to say that none of this handwriting is his own. Is that correct?

*Witness.* Not a bit.

*Mr. Faulks.* I submit the book is not proven and it is not competent for this witness to state what any of these entries are or what they show.

*Mr. Ward.* Same objection.

A It refers to two checks, one for $1,600,000 and one for $166,000, charged against the depositor's name mentioned to the left of the figures.

Q That is to say the Metropolitan SS Line, whatever that was? A Yes.

Q I call your attention to Certification No. 112; have you pointed out the page which covers the sum of the checks which went to make up

that aggregate as shown on Exhibit C. 20? A Yes.

Q And that entry is dated what? A March 5, 1910.

Q What entry do you point to there as having been included in that aggregate as shown on Exhibit C. 20? A Check of $1,400,000.

Q To whose order? A I don't know that.

Q Drawn by whom? A Drawn by the Metropolitan Steamship Company.

Q Referring to the entry in the book Certification No. 111, who drew the two checks which aggregate $1,766,000?

*Mr. Faulks.* I object to that as immaterial and incompetent, and on the further ground that the witness has shown no knowledge on this subject and has no familiarity with these books, and none of the entries were made by him or under his direction or supervision, and this examination is entirely improper.

A The Metropolitan Steamship Line.

Q Was the Metropolitan Steamship Line the same depositor as the Metropolitan Steamship Company on your books? A The same; it is a clerical error.

Q And what is the relation between the entry in Certification Book No. 111 for an aggregate of $1,766,000, charged to the Metropolitan Steamship Line, and the entry in Certification Book No. 112 for $1,400,000, charged to the Metropolitan Steamship Company, and the aggregate of $3,166,000, set up in the Exhibit C. 20, under the date of March 5?

*Mr. Faulks.* I object to that on the ground that the witness clearly appears to

have no knowledge on the subject whatever; that he does not know of any relation; he is not familiar with these books, and they are not kept by him or under his direction. The handwriting is made by several different persons and cannot even be identified by him.

*Mr. Ward.* Same objection.

A These checks that I have specified in the two certification books constitute the entry of $3,166,000 appearing in the ledger of that account.

Q Which is in evidence as Exhibit C. 20? A Yes, to the best of my knowledge and belief.

Q Do you know in whose handwriting the entry in the Certification Book No. 112 is for this entry? A No, sir.

*Cross examination* by Mr. Ward.

Q Mr. McNeil, are the items sent to the Clearing House exclusively checks? A Only checks.

Q Are any accepted drafts sent to the Clearing House? A There might be an occasional one; not supposed to.

Q How about notes which have been presented and certified? A That is different; it becomes a check then.

Q So your former answer is to be understood as including notes which have been certified? A They must be presented for certification before they can be sent through.

Q After that they are treated as cash items? A Yes.

*Mr. Faulks.* We will agree to your calling Mr. Lewis A. Keidel, in the place of Mr. Oxenham mentioned in the notice, with the same force and effect as if he were named

in the notice and a resident of the State of New York.

HAROLD POWELSON, sworn for complainant.

*Direct examination* by Mr. English.

Q You are employed by the Bank of the Manhattan Company here in New York? A Yes, sir.

Q What is your position in the company? A Assistant receiving teller.

Q What were you in March, 1910? A The same.

Q Where do you live? A In New Jersey.

*Mr. Faulks.* I object to the witness being examined, it now appearing that he is a resident of the State of New Jersey, and therefore no authority under the law of New Jersey for his examination without the State, and moreover, the notice under which the depositions are being taken only calls for the examination of witnesses residing without the State. I think the witness should be subpoenaed to appear upon the hearing, and on these grounds, I object to his evidence being taken, and if it is taken, I shall move to strike it out.

*Mr. English.* We propose to examine the witness on the books of the bank, which is a corporation not resident of New Jersey, or subject to the jurisdiction of the New Jersey court, and the evidence which we understand he gives, is solely from the books made in his own handwriting, and not independent of the books, and therefore because the books from which he testifies are not subject

to the jurisdiction of the court, I will be compelled to get the evidence as to the record of the entry in this manner.

*Cross examination* by Mr. Faulks.

Q Whereabouts in New Jersey do you reside? A Matawan.

Q How long have you resided there? A Eighteen or twenty years.

*Mr. Faulks.* I renew my objection and notice.

*Further direct examination* by Mr. English.

Q What is this book you produce, a book entitled "Debit Cash G to O?" A Yes.

Q That is a ledger? A No.

Q Cash book? A Yes, sir.

Q And it has here an entry headed March 5, 1910, in the name of the New England Securities Company? A Yes, sir, that is correct.

Q In whose handwriting is that entry? A That is my handwriting.

Q And from what memoranda or books or papers did you get the information which you set up in that entry? A From the check.

Q You had a check before you? A Yes, sir.

Q More than one check? A Yes, sir.

Q How many? A Two.

Q So you made those entries there from two checks that you had physically before you when you made the entry? A Yes.

Q And what is the object of this book which you produce? A That is a check on the ledger.

Q And it is designed to show what set of facts? A It is merely a check on the ledger; it is for the aid of the routine work in the bank

in checking up the ledger and also check desk book; it proves up other work.

Q And it is designed to show checks which have been charged to the account of any given depositor? A That is true.

Q And in this instance it shows two checks charged to the account of a depositor called the New England Securities Company, is that correct? A Yes, as far as I can see.

Q You had before you these two checks which were signed by that company? A I should say so, yes, sir.

Q That is the usual practice, is it? A If you will pardon me, I would like to say that this is not my regular work; I am testifying to something I did, because that is my handwriting, but it is not my regular work.

Q You have no recollection outside of the records? A No, sir. The assumption is there were two checks there because there were two single entries; my duties don't call me up in this department; that is aid given to another man, probably on Saturday afternoon; that is the only time I would have a chance to help him.

Q Is that the first entry that is made of a check which is charged to a given account in this book? A I don't follow you.

Q What is the first book in which any entry is made of a check which is charged to some depositor's account after he has drawn on the check? A There has to be an entry in the check department's books.

Q Is that what you call the check desk book? A Yes.

Q That is the first entry? A Yes.

Q And that is made from the check itself? A Yes, sir, that is made from the voucher itself.

Q Then the check is turned over to you or to the man who makes the entry in this book? A In that case it was, yes, sir.

Q I am trying to get the procedure. A Yes, it goes up in the bookkeeping department; this is the book of the bookkeeping department.

Q After the check is entered up in the check desk book, the physical check is sent up to the bookkeeping department? A Yes.

Q And in this particular case those two checks came to you? A Yes.

Q And you made the entries in this book? A Yes, sir.

Q What becomes of the check after that? A As far as I know, the bookkeeper had it last; as I say, I was doing this for someone.

Q After you have made the entry, or someone else made the entry in this book, what next is done with the check? A It would naturally be filed away in the files.

Q And the entries in the regular ledger are made from this book which is now before us? A No, sir, that is a check; the entries in the ledger are made from the checks themselves.

Q That is also done in the bookkeeping department? A Yes.

Q There are two sets of entries made in that department? A Yes.

Q Do you know to whom those checks were drawn? A I haven't any idea.

Q All you know, there are two checks presumably signed by the New England Securities Company for those respective amounts, which

came to you, and they were entered up in this way? A Yes.

Q Those checks had been deposited in some other bank and returned to you?

*Mr. Faulks.* It does not appear that he has any knowledge of that kind; I object to that as leading.

Q Do you know whether the entries in this book represent checks which go through the Clearing House? A Some do and some don't.

Q Do you know whether those checks charged to the New England Securities Company did? A I cannot say for certain.

Q Look at page 773 of the record of testimony of James McNeil, where this same entry is copied into the record; that is a correct transcript of the entry in the book? A New England Securities Company $1,550,000, $1,450,000; that is correct, it is the same.

Q And the entry which appears on page 773 of the record is a true transcript of the entry which you made and which you now testify as in your own handwriting in this book? A Those two are identical.

*Mr. Ward.* Excepting the letters A and B?

*Witness.* Yes, they are not mine.

*Mr. English.* I again offer in evidence debit cash book G to O, proved by the witness, under date of March 5, 1910, and which he says is correctly copied in the record in the testimony of James McNeil, page 773.

(Marked Exhibit C. 115.)

*Mr. Ward.* Objected to as immaterial, irrelevant and incompetent.

*Harold Powelson, cross.*

*Mr. Faulks.* I want to cross examine as to this particular book.

*Cross examination* by Mr. Faulks.

Q Mr. Powelson, in March, 1910, with what department in the Bank of the Manhattan Company were you connected? A The same as I am now.

Q That is the teller's department? A Yes.

Q You were the assistant teller? A Assistant receiving teller.

Q No part of your duties were connected with the work of the bookkeeping department at that time? A No, sir.

Q This book that you have produced here, this cash book, was one of the books that was kept in the bookkeeping department, wasn't it? A Yes, sir.

Q It wasn't kept by you or under your direction? A No, sir.

Q Have you any recollection of having made these entries? A I cannot say I have, but I cannot deny the writing. That is my handwriting.

Q But you have no recollection of having made the entry? A No, I have no idea what the checks looked like.

Q You have no recollection of from what you made them? A I know I made them from the check, that is all.

Q You remember that? A Yes, I know it must be so, because I know my entry would be that way.

Q If you found your writing there, as you do, I understand you to say that you judge from that, that you must have made the writing from

checks which you had at that time? A Yes, sir.

Q But I am asking now whether you have any recollection at all? A No.

Q About the entries or about there having been made from checks or from anything else? A No, sir, I have no positive recollection.

Q Do you think that you probably made those entries to help out someone else in the bank? A Yes, I must have, because it is not my duty. I know I have done that a number of times, if I missed a train and couldn't get another one, if the boys want to get off, I help them do the work; that is a man's work that was on a vacation—that couldn't be so either, at that time.

Q You don't know anything about it, except that it is your handwriting? A Yes, and I know it must be checks.

Q Because the entries in that book were ordinarily made from checks? A Yes, surely; most of them are checks.

Q Are all of the entries made in that book made from checks? A Not necessarily, no, sir.

Q How do you know those particular entries were made from checks? A Because, if they weren't made from checks, it would say what it was made from.

Q There would be some other entry to indicate that they were made from something other than checks? A Some note on it to indicate that.

Q In the absence of such an entry, is that the only reason you have for saying they were made from checks? A Yes, sir.

*Mr. Faulks.* I object to the reception of this exhibit, both upon the ground that it is

not proven and upon the ground that it is immaterial and irrelevant in any event.

*Mr. Ward.* I have no questions.

*Re-direct* by Mr. English.

Q As I understand from what you said to Mr. Faulks, you cannot testify to this except you look at this book and refresh your recollection? A Yes, sir.

Q You have no independent recollection? A No, sir.

Q Is there any other entry in your handwriting? A Yes, down to about here; the total is not mine.

Q I see here an entry "Metropolitan Steamship Co. ticket $3,166,000?" A That is my handwriting.

Q Made at the same time, March 5, 1910? A Yes, sir.

Q What does that word "ticket" mean? A It means a charge is made by some sort of a ticket, ticket entry.

Q Explain that. A That is a voucher, a charge into an account made by somebody other than the party named there, that is all; the party, whoever charged that account, had authority to do it, but it is not made by the party mentioned, Metropolitan Steamship Co.

Q You mean someone else drew the money from the Metropolitan Steamship Company account? A No, I mean the money transferred from that account probably by a ticket as we call it, bank ticket.

Q That represents a transfer of funds of that amount in the bank to some other account, and by a ticket transferred to the account of the Metropolitan Steamship Company in your bank?

A Not necessarily a transfer; the money is transferred out of that account, and what to, I don't know.

Q Does this ticket mean it is transferred to that account or taken out of that account? A Taken out of it, the ticket does not mean that; the fact that it is in the book means that; the ticket means it is not a check.

Q How did that get out? A By a ticket, as I explained; a charge ticket.

Q Is that ticket signed by someone authorized to sign checks on that account?

*Mr. Faulks.* How does he know?

A They always are.

Q And is that ticket drawn in anybody's favor, like a check? A No, it is not drawn in anyone's favor, but there must be an offset credit, or else somebody's cash wouldn't balance.

Q Is the ticket used as a means of the transfer of the fund from one account to some other account in your bank? A Not necessarily; as a rule, it is, but not necessarily so.

Q Can you say whether it is so in this case? A I cannot.

Q Is it at all customary to transfer money from your bank outside of the bank by anything else than a check? A I cannot say that it is customary to do that, no, sir.

Q Is it true that that represents a transfer of that same fund from the account of the Metropolitan Steamship Company to some other account in your bank? A Not necessarily.

Q What did you have before you when you made that entry? A Ticket, as indicated by the word "ticket."

Q Can you describe that? A No; the ticket must have said "Charge Metropolitan Steamship Co." that amount of money; there must be a credit created by that charge; that must be dissipated in some way. I don't recall the thing.

Q What department would make the entry showing the credit to offset that charge? A That probably goes through the note department.

Q Would the entry of the Metropolitan Steamship Company by this ticket refer to certified checks? A That particular one?

Q Yes. A In no way.

Q Because the word "ticket" appears there? A The mere fact that it says "ticket" there, indicates that that is a new charge in the account, and certification in a book of this sort would have been a past thing, it would have been a thing of the past discharging the account the amount it is certified.

Q But this word "ticket" being here in this book means what?

*Mr. Faulks.* He said he didn't know.

A It means that it is a ticket, that is all; that distinguishes it from a check charge.

Q Is that ticket charged by a proper person authorized to sign checks for the Metropolitan Steamship Company? A I don't know.

Q It is not ordinarily so? A No.

Q The ticket is made up in the bank? A Yes.

Q After proper authority has been given to charge their account?

*Mr. Faulks.* I object to that as leading and calling for a conclusion on a matter

that the witness hasn't shown any knowledge of.

Q Anyway you had before you this ticket when you made this entry? A Yes.

Q You made the entry from the ticket which authorized you to charge the Metropolitan Steamship Company the amount stated there, $2,166,000? A Yes.

Q Under date of March 5, 1910? A Correct.

*Mr. English.* I offer in evidence the entry made by the witness, referring to the Metropolitan Steamship Company.

(Marked Exhibit C. 116.)

"Metropolitan Steamship Co. Ticket $3,-166,000."

*Mr. Ward.* Objected to as irrelevant, immaterial and incompetent.

*Cross examination* by Mr. Faulks.

Q You have no recollection of this ticket? A No, sir.

Q No recollection about the matter whatever? A Either one of them, the check or the ticket.

Q Isn't the ticket, as that word is used in your bank and on these records, simply a memorandum from someone in the bank to make a charge or a credit to a particular account, or simply a memorandum to do so and so? A The writing of the word "ticket" is simply and purely a memorandum, that is true; it distinguishes it from a check.

Q And indicates that some memorandum was given to whoever was supposed to make entries in that book, to make an entry of a particular kind? A It is really more of a help to the as-

sistant bookkeeper and the man who should have written this thing.

Q It is a memorandum that is given to the assistant bookkeeper? A Purely and simply, and is put in by him for that purpose.

Q And simply to show that he had some authority to make that entry? A Possibly an aid to him in locating a voucher afterwards.

Q And simply a matter within the bank? A Surely.

*Mr. Faulks.* I object to the reception of this on the ground that it is not proven, and also upon the ground that the entry is immaterial and irrelevant.

*Re-direct* by Mr. English.

Q You have no independent recollection of that except as you refer to the book and your handwriting? A Yes.

Q You cannot testify except by the aid of the book? A Yes.

Q This book belongs to the Bank of Manhattan Company? A Yes.

Q Is that a New York corporation? A A New York State corporation.

Q Those entries were made in the way you have described as a part of the machinery of the bank in keeping track of these entries? A Merely a check on the ledger.

Q You did it to help someone else? A Yes. I know I have done that a great many times.

Q There is nothing unusual in that, the fact that you did it? A No, sir. You will probably find my entries through other days.

Q Scattered through this book? A Not this book, any ledger.

*Pierre Jay, direct.*

Q Did you make entries in any other books here produced? A No, I don't make those entries.

Q Did your duties require you to make entries? A Only in the pass books of the bank; I am assistant teller.

Q Is it part of your duties to make out the Clearing House record? A I am the Clearing House settling clerk.

Q What are your duties in connection with that? A They are handling the figures, making the settlement in the figures at the Clearing House.

Q Was it a part of your duties to make out these Clearing House lists or sheets which went to other banks? A No, sir, it is not my duty to make those slips up.

Q That are cleared through the banks? A Yes, sir.

Q You don't make up the slips which are physically sent with the bundle of checks to some other bank through the Clearing House? A I do not.

PIERRE JAY, sworn for complainant.

*Direct examination* by Mr. English.

Q Mr. Jay, where do you live? A 49 East 64th street, Manhattan.

Q You are not a resident of New Jersey? A No.

Q You are vice-president of the Bank of the Manhattan Company? A Yes, sir.

Q And have been how long? A Since 1909.

Q Did you, at our request, produce the signature card of the New England Securities Company? A Yes.

*Pierre Jay, direct.*

Q Is this the original signature card? A I believe so.

Q Was any part of that written by you or in your presence? A Yes, sir, I wrote this line here (indicating.)

Q You wrote the words at the top "New England Securities Company;" is any other part of it in your handwriting? A No, sir.

Q "March 5, 1910," is that yours? A No, sir, no other part.

Q Were you there when any other writing was put on that card? A I presume I was there when Mr. MacIntosh signed it.

Q It purports to be signed "George A. MacIntosh, Treasurer?" A Yes, sir.

Q That was done in your presence? A I assume so.

*Mr. Faulks.* You mean you have no recollection about the matter?

*Witness.* I have no recollection of the particular making up of this card.

Q But ordinarily when you made out a signature card and wrote the preliminary name of the depositor, the person authorized to sign, signed in your presence? A It would be likely.

Q That was the usual practice? A Yes.

Q You are the man who opened up this account or attended to the beginnings of the opening of this account? A Yes, sir.

Q And that took place in your office in the bank building? A In the bank office.

Q In whose handwriting are the words "Corporation Trust Company?" A Mr. Johnson's.

Q He is now dead? A Yes, sir.

Q In whose handwriting are the entries on the back of the card giving the names of the introducers? A Mr. Johnson's.

Q Was Mr. Johnson located in the same room with you at the time? A His office is within 50 feet of mine.

*Mr. Faulks.* The question is whether it was in the same room.

*Witness.* Yes, the same general room, the general banking office.

Q And your desks were about fifty feet apart? A Approximately.

Q Did you act together in connection with the opening of this account? A I cannot recall.

Q Can you recollect who was there besides Mr. MacIntosh? A I have a recollection that Mr. Robbins was present.

Q Mr. E. D. Robbins? A Mr. E. D. Robbins, vice-president of the New Haven road, and I presume from the fact that Mr. Hemingway and Mr. Billard are mentioned on this card, that they were also present. I remember that there were one or two other gentlemen with Mr. Robbins at the time.

Q You distinctly remember Mr. Robbins? A Yes.

Q Had you met Mr. Robbins at that time? A Yes.

Q How long before? A I had known Mr. Robbins for two or three years.

Q Mr. Robbins introduced to you then Mr. MacIntosh, or did you know him before that? A I didn't know him before that. I assume that Mr. Robbins introduced him.

Q Do you remember having had any conversation with either Mr. Hemingway or Mr. Billard? A No, I cannot recollect.

*Pierre Jay, direct.*

Q You recollect talking to Mr. Robbins? A I recollect Mr. Robbins came in and I assume that I talked with him; I don't recall any of the conversation.

Q And it was at the instance of Mr. Robbins that the account was opened?

*Mr. Faulks.* I object to that as calling for a conclusion.

Q What is the fact? A The account was introduced by Mr. Robbins.

Q And Mr. MacIntosh appeared as signer of the checks of the New England Securities Company? A He was introduced as treasurer of the company.

Q By Mr. Robbins? A By Mr. Robbins.

Q You say you had known Mr. Robbins some three or four years previous to that; did any other companies in which Mr. Robbins was interested have accounts in your bank?

*Mr. Faulks.* I object to that question on the ground that it is leading and calls for a conclusion on the part of the witness, and it is immaterial, irrelevant and incompetent.

*Mr. Ward.* Same objection.

A Yes, the New York, New Haven & Hartford Railroad.

Q How long prior to March 5, 1910, when this New England Securities Company account was opened, had the New Haven Railroad been a depositor in your bank?

*Mr. Faulks.* Objected to as irrelevant and immaterial.

*Mr. Ward.* Same objection.

A For a number of years, I don't know how many.

*Pierre Jay, direct.*

Q Were you present or did you participate in the opening of the New Haven Railroad account? A No, sir.

Q Did Mr. Robbins ever introduce any other accounts to your bank other than the New England Securities Company?

*Mr. Faulks.* Same objection.

*Mr. Ward.* Same objection.

A I don't remember.

Q Did you produce the signature card of the Metropolitan Steamship Company? A Is it asked for in the subpoena?

*Mr. Brown.* No.

*Witness.* We haven't got it here.

Q It has been produced by your assistant cashier, Mr. McNeil. A We only brought what we were asked to produce.

Q Is the New Haven Railroad still a depositor in your bank?

*Mr. Faulks.* Same objection.

A Yes, sir.

*Mr. English.* I re-offer in evidence the signature card of the New England Securities Company, which is identified by the witness, Mr. Jay, and which already appears copied in the record at page 815 of the testimony, and is the same exhibit offered in evidence and marked Exhibit C. 102, on page 811 of the testimony of James McNeil.

*Mr. Ward.* I object as immaterial, irrelevant and incompetent.

*Mr. Faulks.* I would like to cross examine as to this card.

*Pierre Jay, cross.*

*Cross examination* by Mr. Faulks.

Q Have you any recollection of meeting Mr. MacIntosh at all? A My recollection is that Mr. Robbins and the two other gentlemen who came in with him, had a gentleman with him who signed this card and who, I presume, was Mr. MacIntosh.

Q State your recollection with reference to anybody signing a card at that time. A I have no recollection.

Q It is not at all unusual for signature cards to be signed subsequent to the opening of an account, is it? A Yes, it would be very unusual.

Q Aren't they frequently signed after the account has been opened but before the first draft is made against the account? A Occasionally.

Q I don't understand that you go so far as to say that you distinctly recollect meeting Mr. MacIntosh at that time? A I cannot recollect his features.

Q You don't recollect meeting any man by the name of MacIntosh; you don't carry that name in your mind as someone you met at that time? A No.

Q You think Mr. Robbins was there? A Yes.

Q And there were one or two other gentlemen with him? A Yes.

Q Have you any recollection, apart from this card, as to who these other men were? A I remember having met both of them in the bank at sometime or other.

Q But you cannot say whether it was that day or not? A Except from the record on the card, I cannot say.

*Pierre Jay, re-direct.*

Q That record wasn't made by you? A No, not by me.

Q You don't recollect having seen Mr. Johnson make it, do you? A No, sir.

Q I notice that the endorsement on the card bears the name Mr. E. D. Robbins, vice president N. Y., N. H. & H. Rd. Co.; do you know whether Mr. Robbins was in fact vice-president of the New Haven at that time? A When I first met him two or three years previous to this, I understood that he was vice-president, and I have never looked up the records at this particular moment.

Q You have no recollection of the actual making of any of the entries appearing on either side of this card whatever? A No.

Q And no part of it, except the words "New England Securities Company," under the printed words "Authorized signature of" is in your handwriting? A That is my handwriting.

Q And that is the only part that is? A Yes, sir.

*Mr. Faulks.* I object to this card as immaterial, and irrelevant, and as not properly proven.

*Re-direct* by Mr. English.

Q You of course recognize your own handwriting? A I do.

Q Does that refresh your recollection to some extent? A Yes, to the extent that I remember Mr. Robbins and two others came in.

Q And also to the extent of remembering that Mr. MacIntosh signed it? A I cannot recollect Mr. MacIntosh physically.

*Mr. Faulks.* I object.

*Pierre Jay, re-direct.*

Q You do recall that is was signed by the person introduced by Mr. Robbins as the person authorized to sign?

*Mr. Faulks.* I object to that as leading, and contrary to the statements already made by the witness.

A It would be naturally that that signature had been made in my presence; I cannot recollect seeing him actually sign it.

Q Mr. Jay, you have charge of the granting of loans in the bank, you are one of the officers? A Yes, sir.

Q Mr. McNeil has so testified? A Yes.

Q Is the New England Navigation Company a depositor in your bank?

*Mr. Ward.* Objected to as immaterial.

*Mr. Faulks.* Same objection.

A I don't think so.

Q Has it ever been a depositor in your bank?

*Mr. Ward.* Same objection.

A I have no recollection.

Q Was it a depositor in your bank in 1909? A I have no recollection; I cannot say positively.

Q Who does know? A I would have to look up our records.

Q Who is the custodian of the record which you would have to show that fact? A Our ledger would show that.

Q Under whose general charge were the ledgers kept in 1909? A The various bookkeepers, I cannot say just which one, they rotate.

Q Is any one directly responsible for the accuracy of the bookkeeping, or was there at

that time? A At that time each ledger keeper was responsible for his own bookkeeping; they all, of course, reported to the general bookkeeper.

Q Do you know whether your bank ever made a loan to the New England Navigation Company?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

A I have no recollection.

Q You say they didn't or you don't remember? A I have no recollection.

Q Have you any recollection whether the New England Navigation Company owes your bank any money at the present time on a loan?

*Mr. Faulks.* Same objection.

A I cannot say positively.

Q What officer of the bank would be apt to know those facts? A I cannot suggest anybody, but I would have to look it up to make sure.

Q To what source would you go to ascertain these facts? A To the records of our loan clerk.

Q Who is the loan clerk at the present time? A M. W. Tichenor.

Q How long has he been loan clerk? A For over five years.

Q Who was the note clerk in 1909? A The same man, M. W. Tichenor.

Q He has custody of the records which indicate these loans? A Yes.

*Mr. Faulks.* You mean any loans?

*Mr. English.* Yes.

Q Do you know where he lives? A I am not positive.

*Pierre Jay, cross.*

Q Do you know what State? A No, I am not positive; I think he lives in New Jersey, but I am not sure.

Q Do you know whether the Billard Company is a depositor in your bank?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

A I cannot state positively.

Q Do you know whether the Billard Company has ever been a depositor?

*Mr. Faulks.* Same objection.

A I cannot state positively.

Q Do you know whether John L. Billard is or ever has been a depositor in your bank?

*Mr. Faulks.* Same objection.

A I cannot state positively.

Q How would you go about it to ascertain those facts? A Examine the records.

Q What records? A The ledgers.

Q And they are in charge of these various bookkeepers? A Yes.

*Cross examination* by Mr. Ward.

Q Do you know Mr. Billard by sight? A I remember meeting him once in the bank.

Q Do you know Mr. Hemingway by sight? A I make the same answer.

Q You haven't any present actual recollection of their being present on March 5, 1910, when the account of the New England Securities Company was opened, have you? That is to say, of those two individuals? A I connect my meeting with them in the bank with this occasion, from the fact that their names are on the back of the signature card.

*Pierre Jay, re-direct.*

Q Then you have no actual recollection, have you?

*Mr. English.* He said he met them once.

A That is all; simply met them once.

*Re-direct* by Mr. English.

Q You think you only met Mr. Billard once; is that your recollection? A I have no other recollection.

Q And the same is true of Mr. Hemingway? A Yes.

Q Do you know who Mr. Hemingway is, or any of his business connections? A I believe he is president of a bank in New Haven.

Q Do you know whether he is or has been connected with the New Haven Railroad?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

*Mr. Ward.* Same objection.

A I always understood that he had been a director.

Q Do you know whether or not he was a director in 1910, on March 5?

*Mr. Faulks.* Same objection.

A I never looked it up.

Q Do you know any of the business connections of Mr. Billard?

*Mr. Ward.* Objected to.

A No, I don't know positively.

Q Were you introduced to these other gentlemen by Mr. Robbins? A I presume so.

Q Mr. Robbins was the only one of the party you knew when they first came in? A I think so.

*Walter A. Rush, direct.*

Q And he introduced his associates to you?

*Mr. Faulks.* I object to that on the ground that it is leading.

Q Who introduced the other gentlemen with Mr. Robbins to you?

*Mr. Faulks.* Witness has said he has no recollection other than that he has already told us about.

A I have no recollection, but I presume Mr. Robbins did.

WALTER A. RUSH, sworn for complainant.

*Direct examination* by Mr. English.

Q You are connected with the Bank of Manhattan Company? A Yes, sir.

Q And have been how long? A Eight years.

Q You have produced here, at our request, a book called "Certification No. 111?" A Yes, sir.

*Mr. English.* Which is referred to in the testimony of James McNeil at pages 817 and 819.

*Mr. Faulks.* I object to the examination of the witness unless it appears that he is a non-resident of the State of New Jersey.

Q Where do you live? A Elizabeth, New Jersey, 89 Summit Road.

Q Have you any recollection of the entries which appear in this book, except that they are in your handwriting?

*Mr. Faulks.* It now appearing that the witness is a resident of the city of Eliza-

beth and State of New Jersey, I object to his examination, both because it is unauthorized under the statutes of the State of New Jersey, and because his name is given in the notice as a witness residing without the State of New Jersey; if this examination is pressed, I shall move to strike out his evidence.

*Mr. English.* We say in reply to that, the same as we did in reply to the witness Powelson, namely, that the witness is called to testify to entries in his own handwriting made in the books; that the books belong to the Bank of Manhattan Company, a New York corporation, and out of the jurisdiction of the Court of Chancery of New Jersey, and that the witness has no independent recollection of the facts except as his recollection is refreshed from the entries in the books.

Q I call your attention to that part of this book which you produce, "Certification No. 111," under the heading March 7, 1910; are the entries on that page in your handwriting? A Yes, sir.

Q I notice an entry "Metropolitan Steamship Line," opposite which are two sets of figures; is that writing in your handwriting? A Yes, sir.

Q What did you have before you when you made that entry? A Checks, I suppose, I don't remember.

Q What are the entries in this book for; what is the purpose of them? A To check up with the certification sheets and to prove the Clearing House stuff that come in.

Q These entries are made after the checks certified on your bank have been deposited in

some other bank and come back through the Clearing House?

*Mr. Faulks.* Objected to as leading; the witness ought to be asked what the usual course of business is in connection with the entries in the books.

*Mr. English.* We have had this so many times, that it is hardly leading.

Q Is that correct? A Yes.

Q And these checks which you had before you were checks which had been received by your bank through the Clearing House in that manner?

*Mr. Faulks.* Same objection.

A Yes.

Q And the object of this entry is what? A To prove the Clearing House items that come in.

Q Were these entries made by you in the ordinary course of business? A Yes, sir.

Q Look at page 818 of the record in the testimony of James McNeil, where this same entry is copied; that is copied in correctly? A Yes.

Q And the entry, the copy of which appears on page 818, is taken from the entries made in your handwriting in this Certification No. 111? A Yes, sir.

*Cross examination* by Mr. Faulks.

Q Have you any recollection about these entries at all, Mr. Rush? A None.

*Mr. Faulks.* I object to the reception of this exhibit on the ground that it is not properly proven, and on the further ground that it is irrelevant, immaterial and incompetent.

*Walter A. Rush, re-direct.*

*Cross examination* by Mr. Ward.

Q Does that book contain entries relating to checks which do not go through the Clearing House? A Not in the morning work.

Q Do they with respect to the afternoon work? A Afternoon work would come through the tellers.

Q Some of the entries in that book then relate to checks which are not part of the city clearings? A Not in this book.

*Mr. Ward.* I object to the offer on the ground that it is entirely irrelevant and incompetent.

*Re-direct* by Mr. English.

Q This book represents checks through the Clearing House? A Yes.

Q And you cannot testify to this matter at all, except as you refresh your recollection from the entries, as I understand it? A That is all.

Q (*By Mr. Faulks.*) You are only able to refresh your recollection to the extent of saying that that is your handwriting? A That is all.

Q (*By Mr. Ward.*) Do those entries necessarily relate to certified checks? A Certified checks.

Q (*By Mr. Ward.*) Do they have anything to do with cashier's checks? A No.

*Mr. English.* I would like to call William F. Garretson, who is mentioned in the notice as F. T. Garretson.

*Mr. Faulks.* I suggest that the Master amend the name in the original notice.

*William F. Garretson, direct.*

WILLIAM F. GARRETSON, sworn for complainant.

*Direct examination* by Mr. English.

Q You are employed by the Bank of the Manhattan Company? A Yes.

Q In what capacity? A Bookkeeper.

Q How long have you been a bookkeeper for that bank? A About eighteen years, more or less.

Q You live where? A Somerville, New Jersey.

*Mr. Faulks.* It now appearing that the witness lives in Somerville, New Jersey, I object to his further examination, both because it is unauthorized under the statutes of the State of New Jersey, and because his name is given in the notice as a witness residing without the State of New Jersey, and if this examination is pressed, I shall move to strike out his evidence.

*Mr. Ward.* Same objection.

*Mr. English.* To which I make the same reply as I did in the case of Mr. Rush and Mr. Powelson.

Q You produce here book called Ledger 86 G to O? A Individual ledger of the Bank of the Manhattan Company.

Q This is the individual ledger? A Yes.

*Mr. English.* It is the same book referred to on page 782 of the testimony of James McNeil.

Q And are the entries in that ledger in your handwriting on page 1474? A Yes, sir.

Q Have you any recollection of the matter independent of the entries in your handwriting?

A I have no recollection of it, simply it is my work.

Q This contains at the top of this page 1474 a statement of a depositor's account? A Yes, sir.

Q What depositer? A New England Securities Company.

Q How much of the entry relating to that account is in your handwriting? A All of it.

Q Just look at page 782 of the record, in the testimony of James McNeil; that sets forth correctly a copy of this account in your handwriting in this ledger? A Yes, sir.

Q From what memorandum or data did you get the entries which you made? A From deposit ticket from the second teller's cage.

Q And the statement of this account, as already appears, has a debit and credit side; you got the credit entries from the deposit ticket? A Yes, sir.

Q Where did you get the debit entries from? A From the checks that came in.

Q The original checks making drafts on the account? A Yes.

Q And these entries showing the debits and the credits were made up in your handwriting in this book from those sources of information? A Yes, sir.

*Cross examination* by Mr. Faulks.

Q You make the statement as to the sources from which the information for these entries was obtained simply because that is the usual practice in the bank; is that not so? A Yes, sir, that is so.

Q You don't, as a matter of fact, recollect having made these credit entries from any de-

posit slips, do you? A I don't recollect now; no.

Q And you don't recollect having made the debit entries from any checks that were in your possession? A I have no recollection of that at the present time.

*Mr. English.* I re-offer in evidence page 1474 of ledger 86, G to O, of the Bank of the Manhattan Company, which has already been offered in evidence, as appears on page 782 of the testimony of James McNeil.

(Marked Exhibit C. 117.)

*Mr. Faulks.* I object on the ground that the entries are not proven, and that they are in any event immaterial.

*Mr. Ward.* Same objection.

*Re-direct* by Mr. English.

Q What was the invariable practice with reference to making entries, from the original checks or not? A From the original checks as they are passed up to me from the second teller's cage.

Q You did it in this case because that was the universal custom? A Yes.

Q That is always the practice? A Yes.

*Mr. English.* I omitted and therefore now re-offer in evidence the entry in the book designated Certification No. 111, proved by the witness Rush, which already appears in the record at page 818 of the testimony of James McNeil.

(Marked Exhibit C. 118.)

*Mr. Faulks.* I object on the ground that the entries are not proven and that they are in any event immaterial and irrelevant.

*Mr. Ward.* Same objection.

CHARLES H. LAUGHLIN, being duly sworn according to law, on his oath says:

*Direct examination* by Mr. English.

*Mr. English.* This witness is not named in the notice under which the testimony is taken, but by consent of counsel is sworn in the cause with the same force and effect as though he had been mentioned in the notice.

*Mr. Faulks.* That is correct.

Q Mr. Laughlin, where is your residence; where do you live? A New York City.

Q You are not a resident of New Jersey? A No.

Q You are a bookkeeper in the Bank of the Manhattan Company? A Yes.

Q I show you a paper which is marked here as Exhibit C. 16 for identification; in whose handwriting is that paper? A That is mine.

Q From what did you get the figures and other writing which is set forth on that paper? A That is a copy of the ledger.

Q The ledger of the Bank of the Manhattan Company? A Yes.

Q Is that a true copy? A Yes.

Q Made by you? A Made by me.

Q I show you also a paper marked Exhibit C. 20 for identification; in whose handwriting is that? A Mine.

Q Was that made from the ledger? A A copy of the ledger.

Q Made by you? A By me.

Q And is it a true copy? A A true copy.

Q So that the paper Exhibit C. 20 for identification shows the credit and debit entries in the ledger of the Manhattan company against the Metropolitan Steamship Company? A Yes, sir.

Q And the paper Exhibit C. 16 for identification is a true copy of the ledger entries against the New York, New Haven and Hartford Railroad Company? A Yes.

Q Between the dates named in each paper? A Yes.

*Mr. English.* I offer in evidence paper heretofore marked Exhibit C. 16 for identification.

*Mr. Faulks.* I object to the reception in evidence of this paper, not upon the ground that it is a copy, but for the reason that it and its contents are irrelevant, immaterial and incompetent.

(Exhibit C. 16 iden. marked Exhibit C. 16.)

*Mr. English.* I also offer in evidence paper marked Exhibit C. 20 for identification.

*Mr. Faulks.* I make the same objection.

(Exhibit C. 20 iden. marked Exhibit C. 20.)

No cross examination.

*William Reed, direct.*

WILLIAM REED, sworn for complainant.

*Direct examination* by Mr. Brown.

Q What is your name? A William Reed.

Q Where do you reside? A Brooklyn, New York.

Q You do not reside in the State of New Jersey? A I do not.

Q What position do you hold? A Assistant cashier of the National City Bank.

Q How long have you been assistant cashier of the National City Bank? A Seven years.

Q You are familiar generally with the banking business and the methods of doing business at banks? A Reasonably so.

Q Tell us the method of doing business through the Clearing House, the method of paying checks drawn by a person who has an account in one bank, which check is deposited in another bank, through the Clearing House.

*Mr. Faulks.* Objected to as irrelevant, immaterial and unnecessarily encumbering the record.

A The depositors lodge their checks in their respective banks; the banks generally at the close of business sort the checks, so that the checks drawn on a given bank are in one place; they are listed and totaled; by common consent all banks meet at the place called the Clearing House, where these checks are exchanged, each bank delivering to every other bank the checks drawn on it; the checks are in a package, and usually a list on the outside of the package displaying the amounts of the checks contained, with the grand total; those totals are charged to the respective banks.

Q That is, a list is made by each bank of the checks deposited in that bank by its cus-

tomers, which checks are drawn on other banks, and such list is sent through the Clearing House to the bank on which the checks are drawn? A That is generally correct; yes, sir.

Q On the fifth of March, 1910, three checks were deposited by the Metropolitan Steamship Company of Maine to its credit in the Bank of Manhattan Company, one of these checks was for the sum of $200,000, one for the sum of $1,450,000, and one for the sum of $1,550,000. The sixth day of March, 1910, was Sunday. In the ordinary course of business, when would those checks pass through the Clearing House and reach the banks in New York on which they were drawn? A In the usual course of business they would be presented at ten o'clock in the morning at the Clearing House on March 7th, if that was Monday.

Q What would be sent by the Bank of Manhattan Company with those checks to the bank on which they were drawn, what would accompany the checks?

*Mr. Faulks.* I object to that question on the ground that what would be sent or what would accompany the checks is not a matter of proper inquiry. If the witness knows what was done, that is one thing, but to ask him to speculate as to what would be done, is clearly improper.

Q What would in the ordinary course of business accompany the checks?

*Mr. Faulks.* Objected to on the same ground, that it is immaterial and incompetent.

A A plain sheet headed with the bank's name, presumably giving a list in amounts only

of the checks enclosed in the package and the grand total.

Q That is, the Bank of Manhattan would, the afternoon of the date the check was deposited with that bank, prepare a list of all the checks, showing the amount of each check, and send that list to the bank on which the checks were drawn? A That is generally correct.

Q And that list would reach the banks on which the checks were drawn on Monday, the seventh day of March, 1910, in the ordinary course of business?

*Mr. Faulks.* Objected to for the same reason.

A It would be left with a representative of the respective banks at the Clearing House.

Q On that date? A Yes.

Q Would it eventually reach the bank to which the checks were sent? A Shortly after, within an hour or two, generally.

Q Along with the checks? A Yes.

Q And then what would be done with those checks and list?

*Mr. Faulks.* Same objection.

A On general principles I can speak now only.

Q Take the list, what becomes of it? A The checks inside of the package would be compared with the list, to see if it were true.

*Mr. Faulks.* There is nothing to show that this witness knows what would be done in any other bank, or what was done in any other bank, either in the ordinary course of business or at any other time; I mean, so far as it appears, he only knows what was done or would be done in the

ordinary course of business in his own bank.

*Mr. English.* He is speaking of the general custom with reference to the Clearing House.

*Mr. Faulks.* The question is directed, as now happens, after the operation of the Clearing House has ceased and the list and checks are forwarded to the various banks upon which they are drawn. It does not appear that this gentleman is either connected with the Clearing House or with any other bank than the National City Bank.

Q Is your bank connected with the New York Clearing House? A It is a member.

Q Is not the Bank of Manhattan Company a member of the New York Clearing House? A I believe it is.

Q Is the method of doing business which you have just described common to all banks that are members of the Clearing House?

*Mr. Faulks.* There is no foundation as to any knowledge of the witness on that subject, and I ask that before the question is pressed, I be permitted to cross examine him as to his knowledge.

*Mr. English.* We will be glad to have you do so.

*Cross examination* by Mr. Faulks.

Q Are you connected with any other bank than the National City Bank of New York? A I am not.

Q Have you been connected with any other bank during the last seven years? A I have not.

*William Reed, direct.*

Q Your time is fully occupied with your business duties at the National City Bank, is it not? A Yes.

Q And devoted entirely to the business of that bank? A It is.

*Mr. Faulks.* I object on the ground that the record shows the witness is not qualified to answer that question.

*Further direct* by Mr. Brown.

Q You do business with all other banks through the New York Clearing House? A All member banks.

Q And you settle your claims with them and they against you through the Clearing House, do you not? A That is generally true.

Q Is it not a fact that all the larger banks in New York are members of the Clearing House? A Not all the trust companies, but generally the larger banks, strictly speaking, yes.

Q And the trust companies do their business through some member of the Clearing House, do they not? A Some of them.

Q Most of them do, do they not? A I should say yes to that, I think.

Q Is the method of doing business which you have described common to all banks that are members of the Clearing House? A I believe it is.

Q Have you the list of checks that was received by your bank from the Bank of Manhattan Company through the Clearing House on the seventh day of March, 1910? A I have not.

Q What has become of that list? A It has been destroyed.

Q You make no copy of that list of checks? A No.

Q You make no entry of the total of the checks received from the Bank of Manhattan? A Yes, but that is also destroyed.

Q You make only one entry of the total? A Yes; that is done at the Clearing House.

Q When the checks are received, what is done with the checks that you receive from the Bank of Manhattan Company drawn by its depositors and customers on your bank? A After the contents of the package are proved, the checks are sorted according to makers and listed or totaled in some manner and charged to the respective accounts.

Q State what book the first entry is made in charging those checks to the respective accounts. A In the National City Bank of New York we have no such book.

Q What do you have? A We make what is termed a machine list.

Q Is that made by a clerk who operates the machine from the checks themselves? A It is.

Q After the list is made what is done with the checks then? A Different conditions prevail according to accounts; in some, at the close of business on the day that the proof is made, as we term it, everything is true, the checks are canceled, and in some cases filed until the end of the month, or the end of the week, all depending on the terms; sometimes at the end of the day they are returned to the respective customers.

Q And no entries are made of the checks except on this machine list? A The grand total is posted against the customer's account.

Q What is done with this machine list? A That is usually destroyed—that is, at the end of—in our bank—that is not general, I believe —I think we keep them two years.

Q Is the customer's name to whose account these checks are charged placed on this list? A Yes.

Q That is, the machine list made on March 7th, 1910? A If the system prevailed, and I have no doubt it did.

Q Have you the machine list made on March 7, 1910, which shows a check for $1,550,000 drawn on your bank by one of your customers or depositors? A I have.

Q Will you produce that list? A I have the original. (Producing same.) I have a sworn copy; I would like to keep the original.

*Mr. Brown.* We offer in evidence the machine list produced by the witness, dated March 7, 1910, entitled at the top, "Far. Loan & Trust Company Gen'l," and by agreement of counsel, a true copy of the original list is substituted as the exhibit.

*Mr. Faulks.* There is no objection to the substitution of the copy; we do, however, object to the exhibit, on the ground that it is irrelevant, immaterial and incompetent, and it may be considered that my objection applies to all this testimony.

*Mr. Ward.* I object to this entire line of testimony from this witness and other witnesses testifying to matters of the same general nature, on the ground that it is immaterial, irrelevant and incompetent, and as not bearing upon the issues between the complainant and the defendant Pacific Navigation Company.

(List marked Exhibit C. 25.)

*William Reed, direct.*

Q On this list of checks, Exhibit C. 25, there appears one check for the sum of $1,550,000; can you tell us to whose account that check was charged? A It was charged to the account of the Farmers Loan and Trust Company.

Q Where is the Farmers Loan and Trust Company located? A New York City.

Q Is it a member of the Clearing House? A It is not.

Q Does it clear through your bank? A It does not.

Q Do you know what bank it does clear through? A It does not clear.

Q Can you tell us what the word "general" means on this Exhibit C. 25, after the name Farmers Loan and Trust Company? A That is entirely an internal matter and has reference to a particular matter, that is all.

Q Why was this charged to the Farmers Loan and Trust Company? A Because they made it.

Q That is, they drew a check for the sum of $1,550,000 on the National City Bank? A I presume that must be true; we indicated that on the slip.

Q At that time did they have an account with the National City Bank? A They did.

Q Which was marked "General?" A Marked "General."

Q Did they have sufficient funds there at that time to pay this check? A Presumably.

Q And the other checks named on this list? A Yes. I presume that would be true.

Q What was finally done with this check? A It was sent to the Farmers Loan and Trust Company.

Q In the ordinary course of business? A In the ordinary course of business.

Q Do you have any particular recollection about this special check? A I have not.

Q How long had the Farmers Loan and Trust Company had such an account as this which is called a general account, on March 7th, 1910? A Oh, I cannot answer that; I don't know.

Q Do they still have such an account at your bank? A They do. It was not exceptional, if that is what you mean.

Q Checks for such a sum as this were not exceptional? A Not at all.

Q At least for the Farmers Loan and Trust Company to draw on the National City Bank? A No.

*Cross examination* by Mr. Faulks.

Q These records of your bank which you have spoken of as having been destroyed, were destroyed by it simply in the course of business and in accordance with its usual practice, were they not? A They were.

Q You have no knowledge whatever with reference to this check of $1,550,000 that has been referred to? A None whatever.

Q And anything that you may have testified as to whom it was charged or as to its being paid, or anything else in reference to this check, is simply based upon an assumption which you draw from the fact that the check appears on this machine list which has been offered in evidence? That is, you assume from the fact that it appears on this list, Exhibit C. 25, that it was charged to the general account of the Farmers Loan and Trust Company in the National City

Bank on March 7, 1910; isn't that so? A I can say definitely that was so charged.

Q Because it wouldn't appear on this list unless it had been? A That is true.

Q And that is the only source of your knowledge, is it not? A Not altogether, no.

Q What other knowledge have you with regard to it? A I know that the total of that list was charged to the Farmers Loan and Trust Company.

Q But you know nothing at all about the individual check you have been speaking of? A Nothing.

*Re-direct* by Mr. Brown.

Q You do know that a check for $1,550,000 is included in that total and was paid by the Farmers Loan and Trust Company? A That appears on the record.

Q Did you examine your records for a check for the sum of $1,450,000 charged to some one of your customers on the seventh day of March, 1910? A I did.

Q But you could not find it? A I could not.

Q Did you examine your books and records for a check for $200,000 charged on the seventh day of March, 1910, to the account of one of your customers? A Yes.

Q Did you find such a check? A I found several. I found two, but they are not what you want. As far as I am concerned, you can drop that.

WILLIAM REED, sworn for complainant.

*Direct examination* by Mr. English.

Q You have already testified in this case?

*Mr. Faulks.* I object to his examination upon the ground that he has been previously examined in this cause, under an earlier notice; his testimony having been taken under such earlier notice, on Monday, February 2, 1914, and having been concluded at that time without any reservation or right to recall him, or even notice that it would be done. It appears by the minutes that he was examined upon that day upon direct, cross and re-direct examination, and that his examination was closed. We do not think that the statute authorizes the giving of more than one notice for the examination of any one particular witness, where his testimony is actually taken and closed under the first of such notices.

*Mr. Ward.* I concur in that objection.

*Mr. English.* Mr. Reed's name is named in a new notice and has been re-sworn by the Master and is proposed to be examined on matters other than that which he testified to before.

*Mr. Faulks.* We object to the examination upon the grounds stated, and because of the statement which you have just made.

Q From your previous examination, it appears that you are one of the assistant cashiers of the National City Bank and that you live in Brooklyn? A That is true.

Q You were subpoenaed to produce certain papers and books of the National City Bank;

have you produced any of them? A All that I have.

Q You were subpoenaed to produce books with particular reference to a check for $1,500,000 drawn on the National City Bank and deposited to the credit of the New England Securities Company in the Bank of Manhattan Company on March 5, 1910. You have produced here a bunch of loose leaf sheets; what do they indicate? A Certifications by the National City Bank between the first of March, 1910, and the seventh of March, 1910, inclusive.

Q They are the records of checks that were certified by the National City Bank? A Yes, sir.

Q Turn to the record of about March 5, 1910. A You will find here, by some strange coincidence, that March 5th is dated March 6, which is of course a mistake, it being a Sunday.

Q Wherever March 6 appears here it ought to be March 5? A Yes. The first sheet is correctly dated; the successive sheets for that day are dated wrong.

Q Do these certification sheets show to whom and to what amount the check is charged when certified? A It does.

Q Do these sheets which you produce here show any checks charged to the order of New England Securities Company?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

A Charged what?

Q To whom, depositor's name, New England Securities Company? A No.

Q Do they show any checks certified to the amount of $1,500,000?

*Mr. Faulks.* Same objection.

Q No.

Q Did your bank during 1910 have as a depositor the New England Securities Company? A No.

Q Did it or did it not have as a depositor Edward T. Canfield?

*Mr. Faulks.* Same objection.

A No.

Q Did it have as a depositor Warren D. Chase? A No.

Q Have you a record of a check for $1,500,000 which went through your bank and was deposited in the Bank of Manhattan Company and returned through the Clearing House? A I cannot answer that question.

Q What will help you to answer that question; what records or accounts to turn to? A I wouldn't know from whom any check came now.

Q It appears in evidence by Exhibit C. 101, which is the Clearink House slip of the Bank of Manhattan Company, that on March 7, 1910, there was returned to the National City Bank checks aggregating $2,371,141.22; have you the record which would show what those checks were? A No.

Q Where is that record? A It has been destroyed.

*Mr. Faulks.* In the usual course of business?

*Witness.* Yes, surely.

Q Is there any record of any character which will enable you to say what individual checks made up that total? A No, nor would that ever be so.

Q What kind of a record do you keep which in any way relates to checks of that character returned through the Clearing House? A There isn't any that I know of in any bank; that isn't the way it is done.

Q How is it done? A This list which comes to us from every bank in the Clearing House represents to us just so much figures; there is an item inside the package, one for each amount, and if they compare, that slip is then dismissed; that is the end of that. Then these checks are sorted up by makers and charged to their respective accounts, without any relation as to whom they were received. So that when those checks once become detached from the original package, there is nothing remains to indicate where they came from, unless you can examine the item.

Q If I asked you to find a particular check in Exhibit C. 101, what would be the first thing you would want to know about it? A I would want to know the name of the maker of the check.

Q And then you would trace that back to his account? A Yes.

Q Supposing it was a cashier's check or check signed by the officers of the city bank as opposed to a depositor? A Then I would want to know the same thing.

Q So as to find the name of the person to whom it was charged? A Yes; the expression that it was our cashier's check would be sufficient.

Q You would look that up? A Yes.

Q Have you any records here which would indicate the depositors to whom the checks listed in that Exhibit C. 101 were charged at the time; that is, in March, 1910? A No, for the reason

before assigned, I cannot tell; I would have to go through every account in the bank and look for specific figures.

Q Taking up the subpoena which you were served with, did you bring the Clearing House sheet or itemized list of checks drawn on the National City Bank and sent by the Bank of Manhattan Company through the Clearing House for redemption on March 7, 1910? A No, that has been destroyed in the natural course of business.

Q That you say you cannot procure? A No.

Q Did you produce the records of the National City Bank in which those checks were charged to the account of the person or corporations drawing them? A I think I have already answered that question; I would have to bring the whole bank.

Q You would have to know the depositor first? A Yes, sir.

Q You say you had no account in March, 1910, with the New England Securities Company? A No.

*Mr. Faulks.* You had none?

*Witness.* I had no account.

Q Did you have any account in March, 1910, with the Billard Company?

*Mr. Faulks.* Objected to as immaterial and irrelevant.

A No.

Q Did you have any account with the New England Navigation Company? A Yes.

Q Will you produce the record of that? A Yes.

Q Did you have an account with the New Haven Railroad Company? A Yes.

*William Reed, direct.*

Q Did you produce the record of that? A Yes.

Q Samuel Hemingway? A No.

Q Edward T. Canfield? A No.

Q Warren D. Chase? A No.

Q Have any account at that time with Douglas Nicholson? A No.

Q With the New England Securities Company? A No.

Q Or the New England Investment and Security Company? A No.

Q You have brought here an account of the New England Navigation Company? A Yes.

Q New York, New Haven & Hartford Railroad? A Yes.

Q What is the next one? A Farmers Loan and Trust Company.

Q Which are the papers which refer to the New England Navigation Company? A I have them.

Q You produce here some tissue paper sheets; are these originals? A Those are press copies.

Q And they indicate what, generally? A That is a transcript of the account from the first of March, 1910, to and including the 16th; from the first to the 16th of March, 1910.

Q What are these typewritten slips pinned on here? A They are simply details of items that appear in the total, under the dates shown.

Q Does this mean the total of checks drawn or checks deposited or neither? A Checks drawn.

Q Then do I understand from you that these two typewritten lists here contain the details and also the aggregate of all the checks drawn by the New England Navigation Company on

your bank between March 1 and 16? A No, on the date shown at the head of each slip.

Q There are only three slips here? A Yes; in the other cases there were not a sufficient number to make a list.

Q Explain to me the working of this tissue paper sheet; it begins on the extreme left with what? A The extreme left shows the date of the charge and the amount of each separate item.

Q The amount of the checks drawn? A Yes; or if it says list, the detail would be shown.

Q One of those three typewritten lists pinned on? A Yes, and the total of the charge is extended and in the extreme right hand column the credits received on the respective dates.

Q So the extreme right column shows the deposits made or loans made? A Either.

Q And the column next to the left of that shows drafts; that is correct? A The total of charges.

Q And that may be either in checks drawn out or checks certified and charged to the account? A Either.

Q I don't quite understand the date; where is that shown? A I have the latest date on top. March first is at the bottom. I presume the account was balanced just previous to that.

Q What dates are represented by these sheets? A March 1, 2, 3, 4, 5, 7, 8, 9, 10, 11. 12, 14. Every day but Sunday down to March 16. Fourteenth was not Sunday; the 13th was Sunday; 14th, 15th and 16th.

Q Every day but Sunday? A I don't know; I didn't look over it—yes, they all appear.

Q What is this book entitled "Second Teller's proof?" A The second teller is the receiving teller; it is a total of the amounts received over his window on any given day.

Q Does it show to whom they are credited? A No, only shows totals.

Q What is this book which is endorsed "Third Teller's Proof?" A That is the same thing in respect to the note teller.

Q It shows the amount of moneys loaned on notes? A No, it shows the totals of amounts credited to different ledgers in the bank divided alphabetically and which equal the amount of money he received in payment of particular items during that same day.

Q And if you get any information out of that, you have to know the name of the depositor? A Yes.

Q Look at the Second Teller's Proof, under the entry of March 5, 1910, here, starting at the top of the page is the print "Corresponding Teller," who is he? A That is the total of checks received by the National City Bank through the receiving teller's window, drawn on points out of town.

Q Then here is "Check Clerk No. 8," what is that? A The same description up to the point that they are drawn on us, instead of out of town. We are described as No. 8 in the Clearing House.

Q Do you mean that this represents checks deposited or drawn out? A Deposited in our bank by one depositor and drawn on the accounts of other depositors.

Q In your own bank? A Yes, sir.

Q And the figures opposite Check Clerk No. 8 of $1,981,106.08 was the total of drafts made by depositors on your own bank and put in

someone else's account in the same bank? A Yes, sir.

Q I see an entry here "Paid to First Teller"; what does that mean? A The receiving teller keeps no money over night; on general principles, without knowing the particular details of any one day, would indicate that that was currency which the receiving teller had received and turned over to the paying teller.

Q That is a little internal arrangement? A Yes, sir.

Q And the same is true of "Paid Third Teller?" A Yes.

Q What is "Paid Fifth Teller?" A That is the same general description, except they are items that have documents attached that have to be collected by hand.

Q Underneath you have "Clearing House Exchanges," that represents what? A The amount of checks deposited in the National City Bank drawn on Clearing House banks other than ours.

Q That represents checks deposited in the bank and you send them out through the Clearing House to other banks for collection? A Exactly so.

Q There is nothing in this which indicates the amount of a check drawn on the National City Bank and paid, for example, through the Bank of Manhattan Company? A No, that book has nothing whatever to do with it.

Q Going back to the entry of "Check Clerk No. 8," what records have you which show what drafts were made by depositors in the bank and checks deposited to some other depositor in your bank? A I don't think you

have asked me for that, and I think we wouldn't have it anyhow.

Q Assuming we have or not. A I am not prepared.

Q Tell me what book to connect up with that? A It would be a machine list altogether; we don't keep records; as long as they have served their purpose, we keep them for a reasonable time and destroy them.

Q What would the machine list show, the name of the depositor? A No, the amounts.

Q Would you work backwards to find the name of the depositor? A The same as if the check were received on another bank; we would have to search through for a specific amount.

Q Get a specified list and find the amount of the specified bank and look through the depositors account of that day and find one charged to that account? A Yes. That wouldn't necessarily follow, but it would give us a ground to work on.

Q That is the way you would get at it? A Yes.

Q You didn't bring any records relating to that, whether we asked you or not? A No, I felt very sure we wouldn't have it.

Q This book entitled "Third Teller's Proof," what do you say that represents? I show you entries of March 5; it starts up at the top, money and sight drafts? A The note teller collects items that are drawn on others than ourselves, that have to be presented by hand, and when the proceeds are returned to the note teller, they are credited to the respective accounts, that is, in columns; our ledgers are subdivided; a man's name is Adams, we put it in the A and B column; if Quincy,

we would put it in the Q column. He makes up his columns and makes up a grand total, and it must equal the amount of checks he has received in payment, and that book establishes the fact.

Q There is no particular significance in the word "note?" A That is interchangeable; we call him the note teller and the Third Teller—items presented by hand usually.

Q Handed in through the window? A As distinct from payments through the Clearing House.

Q This has no relation to the Clearing House? A Yes, the checks he has received in payment of all these notes, he sends through the Clearing House the next day, too.

Q If they are drawn on another bank? A Yes.

Q Suppose you wanted to work backwards and find out any particular depositor whose checks figure in this list; how would you get at that; get a machine list, too? A No, I could get nearer to that. The note teller has this credit book where all these columns are spread out and will show these items in detail.

Q Show the name of the depositor? A Yes, sir.

Q Have you that credit book with you? A Yes.

Q Will you produce that? A (After examining the book.) I will take that all back, it does not show the names; that has been changed since my time; I thought it did.

Q What is this big book which you have before you? A This is the third or note teller's credit journal.

Q Which works in connection with the third teller's proof book? A Yes, the third and note

teller in the book mean the same; if we had a credit to a man named Jones, the amount would appear in that column (indicating).

Q You point to "I to M?" A Yes, sir; individual I to M.

Q Exhibit C. 101, which has been proved through the officers of the Bank of Manhattan Company, shows that on March 7, 1910, the Bank of Manhattan Company sent to your bank through the Clearing House checks aggregating $1,854,151.42; when those checks in the ordinary course of business were received by your bank, what sort of entries were made? A The contents of the package are compared with the slip on the outside of it, and as soon as we find that they agree, the checks are immediately sorted out according to the names of the makers and charged to the respective accounts. The moment that the checks enter the work and sorted out by makers, they lose their identity as far as the Clearing House slip is concerned. For instance, if there were just one check received that day, made by one man, it would be simply charged in the ledger account and that would be the end of it. There wouldn't be any list; we don't keep bound records of that sort of thing, and haven't for ten or twelve years.

Q Who was the individual in the course of business who received that bunch of checks from the Bank of Manhattan Company on March 7, 1910? A I cannot recall; it would be a different man every day.

Q In what department of the bank was that done? A We denominate that the check desk; all banks call it that.

Q Who at that time was the responsible head of the check desk? A I don't remember now.

Q Who does know? A I could ascertain, I suppose. I suppose I could ascertain from the records; I don't remember now.

Q You think you could look up and find out? A Yes, but he wouldn't be able to tell you any more than I am telling you now.

Q As to the procedure of the thing? A Not a bit.

Q Then when those checks have been sorted out by the proper individual, they are taken and charged up in the individual ledger, to the name of the depositor? A Yes.

Q Suppose there was in that list a check for $1,500,000, how would you go about it to find out in whose name it was charged? A I would first pick out the names of all accounts that had that much or more charged to them on that day.

Q To do that, what would you get out, the individual ledgers and go through all the depositors? A Yes.

Q Looking for a big charge like that? A Yes.

Q Then when you found this, what would you get? A I would dig up what records existed, if any, and examine the details of the account.

Q When you had gone through these individual ledgers and got a half dozen names, what would you go back to from the individual ledger? A I have shown you New England Navigation Company and New York, New Haven and Hartford Railroad.

Q You go through the individual accounts, and that is all you would do? A Yes.

*William Reed, direct.*

Q Do you know whether any one in your bank has made any effort to ascertain whether a check of $1,500,000 or thereabouts was charged to any individual, which check was supposed to have been included in the package from the Bank of Manhattan Company received on March 7, 1910?

*Mr. Faulks.* Objected to as being too indefinite, because it contains a supposition of which there is no basis in any of the evidence thus far in the case.

A Your question is too comprehensive for me; cut it in half.

Q Has any search been made to ascertain whether there was included in this aggregate of $1,854,151.42 of checks received from the Bank of Manhattan Company on March 7, 1910, a check of $1,500,000 or thereabouts? A I cannot tell any check that came through the Clearing House had any relation to that package at all.

Q You personally? A No, nor anybody else; it couldn't be done.

Q Has any effort been made to examine the individual ledger accounts for charges on March 7, 1910, for a check to the amount of $1,500,000 charged to any depositor? A Yes.

Q And what has been found? A I found one check of that amount.

Q Have you got the record of it with you? A Yes.

Q Please produce it. A There is a check in there for $1,500,000.

Q What is this paper which you hand me? A That is a list of checks accepted by the Farmers Loan and Trust Company and made payable

at the National City Bank of New York and paid by us on March 7, 1910.

Q You say a list of acceptance; what do you mean by that? A Large accounts like that have different ways of doing things—I am not speaking of any one in particular—but a firm will draw a check on a bank, that is one operation; on the other hand, if a draft is drawn on that firm, they may accept it across its face and make it payable at their bank, which has all the force of a draft on the bank direct.

Q Does this list represent checks drawn on the National City Bank? A No.

Q Drawn on the Farmers Loan and Trust Company? A Yes.

Q And signed by whom? A I don't know.

Q Could it be signed either by the depositors in the National City Bank or signed by the bank itself? A It might be anybody in the world; I don't know.

Q How do they get into your records then? A Because the Farmers Loan and Trust Company evidently accepted it and made it payable at the National City Bank.

Q Then what bank would the check be drawn on? A Farmers Loan and Trust Company.

Q And accepted by it? A That is what the record indicates.

Q By being accepted by it, was virtually certified by it? A There is a fine distinction between those words.

Q But is the practical result? A The mechanical operation would be the same.

Q The Farmers Loan and Trust Company would be responsible for the check? A As far as the National City Bank is concerned.

Q Whether they certified it or whether they accepted it? A Yes.

Q And then it was deposited in the National City Bank? A I don't know that.

Q I want to know how it is that this check drawn on the Farmers Loan and Trust Company and accepted by it, turns up in your records? A Because as soon as the Farmers Loan and Trust Company accepted it, it became a draft on the National City Bank.

Q Why was that? A Because it bore their acceptance across the face; without knowing what particular item that was, or its history, all the signs indicate that the Farmers Loan and Trust Company wrote across the face of that item, "Accepted. Payable at the National City Bank of New York," and signed it.

Q Then the Farmers Loan and Trust Company keeps an account with the National City Bank? A Yes.

Q And when this check was accepted by the Farmers Loan and Trust Company and deposited with the National City Bank, your bank charged the Farmers Loan and Trust Company? A Yes.

Q And paid the check? A Yes, I presume so. When I say "deposited with the National City Bank," I mean "received by."

Q Show me on the list, which you produce, this check for $1,500,000 which you speak of? A (Indicating $1,500,000.)

Q You point to a figure where there is first a comma, then 500,000.00? A Yes.

Q And that little comma is the equivalent to one on this record? A That isn't precise; there is a comma there, and should be so, but the sheet is somewhat narrow, and the million col-

umn being the highest of which the margin is capable, the numbers on the extreme edge are almost illegible.

Q Won't you please put a check mark opposite that $1,500,000 check? A (Witness does so.)

Q Have you any other records which refer to this $1,500,000 check which is referred to on this sheet? A No.

Q That is the only record you have of that check? A Yes.

Q Do you know or does your bank contain any records from which you can find out the depositor of that check, the name of the depositor? A None.

Q Do you know or does your bank have records from which you could ascertain the maker of that check? A No.

Q All you know is, that the Farmers Loan and Trust Company sent to your bank on March 7 a check which they accepted and which was drawn on their account with you? A You don't express that quite right.

Q Tell me what this does indicate? A It indicates to me that the Farmers Loan and Trust Company must have accepted an item of $1,500,000 and made it payable at the National City Bank of New York, and which found its way into the National City Bank in the ordinary course of business, from what, I don't know.

Q Assuming that that item, as you call it, was a check, would it be possible for that check to find its way into the National City Bank through the medium of the Clearing House? A It might.

Q And would it be possible for that check to have been deposited, let us say, with the Bank of Manhattan Company, and by that bank sent

through the Clearing House to your bank and received on March 7, 1910? A Without any knowledge of the facts whatever, that is a possibility.

Q So far as the possibilities of the business situation is concerned, this check might have been a check which was deposited in the Bank of Manhattan Company and received on March 7, 1910, through the Clearing House, from that bank, by the National City Bank, is that correct? A It might be so.

*Mr. English.* I offer in evidence this sheet which Mr. Reed produced.

*Mr. Ward.* I object on the ground that it is irrelevant, immaterial and improper, and has not been properly proved.

*Mr. Faulks.* I make the same objection.

Q Who physically makes up this sheet of paper? A It is impossible to tell, any number of a hundred men.

Q Made on a machine? A Yes.

Q From the checks which are placed before the person who makes up the list? A Yes.

Q That is what you call a machine list? A Yes.

Q And I suppose the practice is that this represents a series of checks which were accepted by the Farmers Loan and Trust Company on your bank? A That is the natural construction.

Q And whatever clerk it was had that before him and wrote down on this machine list the total of each check?

*Mr. Faulks.* That would be the course of business?

A Yes.

*William Reed, cross.*

Q You say it would be impossble to say which individual did that? A Absolutely.

Q This is produced out of the records of the National City Bank? A This sheet?

Q Yes. A Yes, sir.

Q It is your original memorandum on that subject? A That is the original record.

Q And it has been in the custody of the bank since March 7, 1910, its date? A Yes, sir.

Q It is produced by you as assistant cashier of that bank? A Yes.

*Mr. English.* I renew the offer.

*Mr. Faulks.* I make the same objection as before.

*Mr. Ward.* Same objection.

*Mr. English.* I offer in evidence so much of it as relates to the item referred to by the witness.

"Forms C C 19 accep check list
Name Farmers Loan
& Tr. National City Bank
Mar 7/10 of New York
Address
*****

,500,000.00
Total 1,901,944.40"

(Marked Exhibit C. 127.)

*Cross examination* by Mr. Faulks.

Q When were these letters "accept," appearing in lead pencil at the top of the sheet, written on it? A Saturday afternoon.

Q Last Saturday aftenoon? A Yes.

Q That is not then part of the records of the bank that are contained on this sheet; it is

simply a memorandum put on there Saturday? A I wrote that myself.

*Mr. English.* Simply to identify the sheet?

*Witness.* Yes.

Q Is there anything on the sheet that either indicates or shows that it is a list of acceptances on March 7, 1910? A No.

Q How did you ascertain that it was such a list; in other words, what led you to write the letters "accep" in pencil at the top of the list at that time? A To improve my own memory; I sent for the head of that department and he informed me.

Q So that you wrote that on there at that time as the result of what some other person connected with the bank then told you? A So far as the identity of it is concerned, yes, sir.

Q That is the only reason you had for so marking it—the information which was thus given you? A Yes.

*Mr. Faulks.* I add the additional objection to this exhibit, that the attempted proof of it is based on hearsay evidence.

Q (*By Mr. English.*) Who is the individual who is the head of that department, whom you say you sent for in connection with this exhibit? A He is one of the auditors.

Q (*By Mr. English.*) Do you remember his name? A No, he is a clerk who does it every day.

Q He isn't the man who would in the ordinary course of business make this record himself? A No; he is closely identified with this operation.

*William Reed, re-direct.*

*Re-direct* by Mr. English.

Q What machinery did you set in operation which resulted in this paper being given to you by some clerk in the bank? A I sent for a transcript of the account of the Farmers Loan and Trust Company and they produced what I have in my hand, in addition to that, the total that appears in the transcript of the account.

Q Of the Farmers Loan and Trust Company? A Yes, sir.

Q Then you sent for this? A I sent for the auditor, so that he would check my own memory and describe to me again the precise nature of those items.

Q When you got our subpoena you concluded in your mind that this check, if it was to be found anywhere, would be in the account of the Farmers Loan and Trust Company? A No, I wouldn't say that; I refer to my answer a few moments ago; I examined all the accounts that had anything as large as that amount in them, and I had a job.

Q How did you light upon the Farmers Loan and Trust Company out of all these numerous accounts? A That was one of the accounts that had $1,500,000 charged to it that day.

Q Were there many others? A Yes.

Q What operated on your mind to make you select the account of the Farmers Loan and Trust Company over any other account containing a check for $1,500,000, to produce papers which you thought corresponded with the demand of the subpoena? A I think that is—

*Mr. Ward.* Objected to as in effect calling for a conclusion on the part of the witness.

*William Reed, re-direct.*

A (Continuing.) As far as I can discover, that was the only account that had that precise amount charged to it on that day, $1,500,000.

Q Show me the transcript of the account of the Farmers Loan and Trust Company which you say contains this same entry. A There is the total of the slip.

Q You are referring now again to those tissue paper records which we talked about a few moments ago? A Yes.

Q You have before you the account of the Farmers Loan and Trust Company? A Yes, sir.

Q Show me where on this tissue paper account is this same check? A It doesn't show; it shows the total.

Q It shows the total of this sheet Exhibit C. 127? A Yes.

Q And that total which was the aggregate of all the checks which were accepted by the Farmers Loan and Trust Company and drawn on the National City Bank on March 7, 1910, was $1,901,944.40? A Yes.

Q And included in the list of checks on Exhibit C. 127 was this $1,500,000 check? A Was a check for $1,500,000.

Q And the tissue paper entry under the same date shows the same aggregate of $1,901,944.40?

*Mr. Faulks.* It does not show without seeing the paper itself any individual check for $1,500,000 or any other amount.

*Witness.* No.

Q But C. 127 does? A Show.

Q Does this same tissue paper list show the check for $1,550,000 which you testified before,

in your examination last February? A Not just the way you put it.

Q Is it included in some of those totals? A Yes.

Q Just what is this tissue paper record? A It is an exact record press copy of the account current of the Farmers Loan and Trust Company.

Q And the particular page you are looking at covers what dates? A Part of the 5th and all of the 7th of March, 1910; in fact, all of the 5th and 7th.

Q Show us where on this tissue paper transcript is the check for $1,550,000.

*Mr. Faulks.* He hasn't identified any particular check.

*Mr. English.* Last February.

*Mr. Faulks.* I object to his being examined on matters with reference to which he was examined at that time.

A That amount right there (indicating.)

Q You point to an aggregate of $2,198,143.20, under date of March, 1910? A Yes.

Q What do you turn to, to satisfy yourself that this check of $1,550,000 was included in that aggregate last mentioned? A Reference is made to the term list; the list is shown in detail.

Q You produce a machine list, a separate paper, which shows the individual amount of checks which make up that aggregate of $2,198,143.20? A Yes.

Q And included in that list of checks I see one for $1,550,000 which is the one you referred to? A Yes, there is a check there for that amount.

*William Reed, cross.*

Q And what is the history of these checks generally which are on this typewritten list? Are they acceptances or come under some other category? A The indications are that they are checks of the Farmers Loan and Trust Company drawn on the National City Bank of New York.

Q A very distinctive thing from those which you call acceptances, which are represented by Exhibit C. 127? A That is the distinction between them.

Q How is this machine list, which contains the $1,550,000 check, made up? A After the same general manner already described.

Q And this tissue paper transcript is pressed right out of the original book of the general ledger? A It is a press copy of a sheet of the same size, a general form.

Q Is this particular thing which you produced made for the purpose of this examination, or is that your original record made in the course of business at that time? A Yes.

*Mr. English.* I offer in evidence the tissue paper transcript of the account of the Farmers Loan and Trust Company in the National City Bank, with particular reference to the entry under date of March 7, 1910, showing the aggregate $2,198,143.20, and the other entry under the same date, showing the aggregate of $1,901,944.40.

*Mr. Faulks.* I want to cross examine with reference to that.

*Cross examination* by Mr. Faulks.

Q Did you make the entries to which Mr. English has just called your attention? A I did not.

*William Reed, re-direct.*

Q Did you make any of the entries that appear on the records now before you? A I did not.

Q Did you ever see them before you got them out for the purpose of producing them at this hearing? A Not that I know of.

Q In all probability you never did? A Yes.

*Mr. Faulks.* I object to the reception of this exhibit, or any part of it, upon the ground that it is not proven, and that it and its contents are irrelevant, immaterial and incompetent.

*Mr. Ward.* Same objection.

*Re-direct* by Mr. English.

Q Do you know in whose handwriting these entries are made? A No.

Q Would it be possible to find out? A I don't think so.

Q One of a number of bookkeepers? A It might be any one of a hundred.

Q Those entries are made in the course of business at the date which appears on them, and they are produced by you out of the records of the bank? A Yes.

*Mr. English.* I offer in evidence that transcript of the account of the Farmers Loan and Trust Company, and ask that the extract be copied into the record.

(Marked Exhibit C. 128.)

Q Before that is copied into the record, I call your attention to a typewritten series of figures at the extreme right of these manuscript figures which contain the aggregates which I named a moment ago; what do they

represent? A Those are the credit column deposits.

Q That shows that a deposit was made on the appropriate date for the amount named in that column? A There was a deposit or something passed to the credit of the account; I have no means of telling where it originated.

Q I notice, for example, under date of March 7, in the credit column, the figures $1,550,000; that represents a credit of that amount on that date to the account of the Farmers Loan and Trust Company in your bank? A Yes; I never saw that before. There appears an item of that amount there; I didn't know it.

*Mr. Faulks.* You don't know anything more about it than the mere fact that it appears there?

*Witness.* That is all I know of any of these.

*Mr. English.* I will include in the offer in evidence so much of the credit column as includes the credit of $1,550,000.

*Mr. Faulks.* I extend my objection to this offer also.

*Mr. Ward.* Same objection.

(Exhibit C. 128.)

FARMERS LOAN AND TRUST COMPANY
In Account with
THE NATIONAL CITY BANK OF NEW YORK.
General.
Date Mar., 1910.
Checks.

| Date | Description | Total Paid Debit | Date | Description | Credit | Total Credit |
|---|---|---|---|---|---|---|
| | * * * * | | | | | |
| | | 2,198,143.20 | | | 1,550,000.00 | |
| | * * | | | | | |
| | | 1,901,944.40 | | | | |

Q Do you know whether your account with the Farmers Loan and Trust Company shows

that in March, 1910, the amount of credits equalled or exceeded the amount of debits? A I don't know without an examination.

Q Look and see; I want to know whether those charges which were made against the Farmers Loan and Trust Company were paid? A (After examining papers.) Yes, they were paid.

Q By the Farmers Loan and Trust Company to your bank? A They were charged to its account.

Q Was the charge paid?

*Mr. Faulks.* He doesn't know anything except what these records show; I object to the question. It already appears from the witness's evidence that he has no knowledge at all with reference to these accounts or the amounts charged to them, or amounts credited to them, or whether the checks were paid or not, except as indicated by the records which he has before him; he never saw the records before and he had no knowledge whatever of these particular transactions, and hasn't any now. He has said over and over again that these records indicate to his mind certain things; it is unfair to the witness and unfair to us to press this question.

A A banker wouldn't ask that question; the charge to its account.

Q Your testimony shows that you charged the account of the Farmers Loan and Trust Company on March 7, 1910, once with a charge of $1,550,000 and once with a charge of $1,500,000; I want to know if those charges were paid.

*Mr. Faulks.* Witness doesn't say he charged them or anything of that kind.

*Mr. English.* His evidence shows that the bank made those charges.

*Mr. Faulks.* His evidence shows that he has produced certain records of the bank indicating that such charges were made and he says that is all he knows about it.

A The Farmers Loan and Trust Company had nothing to do with it; we took it.

Q You mean the Farmers Loan and Trust Company had a sum of money on deposit with your bank? A It had.

Q And when these charges were made, simply appropriated out of that fund sufficient to cover that charge? A We covered that item against this account.

Q And drew that much money out of their account and put it in your own account; is that correct?

*Mr. Faulks.* I object to that as leading and misstating the evidence heretofore given by the witness.

A We charged those items to the Farmers Loan and Trust Company, that account, to reimburse ourselves for a charge made to us by someone unknown to me.

Q In other words, that someone unknown to you, on the faith of the check of the Farmers Loan and Trust Company, of the $1,550,000 transaction, and on the faith of the Trust Company's acceptance of the $1,500,000 transaction, went to your bank and drew out funds to the amount of those two checks; is that right? A That was the net result.

Q And your bank, to reimburse itself, appropriated to itself out of the deposit of the

Farmers Loan and Trust Company with the National City Bank, funds aggregating these amounts? A Yes, sir; practically.

Q You have also produced here a machine list which has already been referred to, and which sets up the details of the various checks which go to make up the aggregate of $2,198,-143.20 appearing on this last exhibit, C. 128; that you say was made up by someone who had before him the checks, presumably? A Presumably.

Q That would have been the course of business? A That would have been the course of business.

Q And this list is the original list made at that time? A March 7th; it is a carbon copy for our own files; the original goes to the maker of the check.

Q And this paper is produced from the files of your bank by you today? A Yes.

Q And the maker of the checks in each case represented on this list is the Farmers Loan and Trust Company? A They were.

*Mr. English.* I offer this list in evidence.

*Cross examination* by Mr. Faulks.

Q Did you have anything to do with the preparation of this list? A None.

Q Did you ever see it before Saturday afternoon last, as far as you know? A Not before I was subpoenaed in this case.

*Mr. Faulks.* Objected to as irrelevant, incompetent and as not proven.

*Mr. Ward.* Same objection.

(Marked Exhibit C. 129.)

*William Reed, cross.*

"Far. Loan & Trust Co.
3/7/10 Genl.
1,550,000.00."

*Mr. Faulks.* Mr. Ward calls attention to the fact that this Exhibit C. 129 is already in evidence as Exhibit C. 25.

*Mr. English.* Now, that my attention is called to that, I see that it is so, but I see that there are two exhibits marked C. 25, but it refers to the one headed Farmers Loan and Trust Co., Genl 3/7/10, and was evidently introduced at the time Mr. Reed was examined before.

*Charles S. Mellen, direct*

## Defendants' Depositions.

IN CHANCERY OF NEW JERSEY.

*Between*

JENNIE R. MORSE, *et al*,
*Complainants*,

*and*

METROPOLITAN STEAMSHIP COMPANY, *et al*,
*Defendants.*

Depositions taken pursuant to notice hereto annexed, before Jesse R. Salmon, a Master in Chancery of New Jersey, on Thursday, the 28th day of May, 1914, at Room 117, in the Hotel Taft, corner of College and Chapel streets, in the city of New Haven, Connecticut,

APPEARANCES:

Mr. Conover English, of McCarter & English, Mr. Martin W. Littleton, Mr. Owen N. Brown, and Mr. E. A. G. Wylie (of the New York bar), for the complainants.

Mr. Frederick J. Faulks, of Lindabury, Depue & Faulks, and Mr. Douglas Nicholson (of the New York bar), for the defendants, Metropolitan Steamship Company, Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes.

Mr. Waldron M. Ward, of Pitney, Hardin & Skinner, and Mr. Mortimer E. Joiner (of the New York bar), for the defendant, The Pacific Navigation Company.

Mr. J. W. H. Crim, personal counsel for Mr. Charles S. Mellen.

It is stipulated and agreed by counsel for all the parties that the signatures of the witnesses to their testimony is waived.

CHARLES S. MELLEN, being duly sworn according to law, on his oath, says:

*Direct examination* by Mr. Faulks.

Q Mr. Mellen, where do you reside? A New Haven, Connecticut.

Q You were formerly president of the New York, New Haven & Hartford Railroad Company, were you not? A I was.

Q During what period of time did you hold that office? A From the first of November, 1903, to the first of September, 1913.

Q Did you take an active part in the business affairs of the company during all of that time? A I was slightly interested.

Q Was your knowledge of its business affairs sufficient to enable you to say whether or not it had any interest, directly or indirectly, in the Metropolitan Steamship Company of New Jersey? A It was.

Q What is the fact? A Never to my knowledge, directly or indirectly, was the New Haven Railroad or any of its subsidiaries interested to the extent of one dollar in the Metropolitan Steamship Company of New Jersey.

Q What have you to say as to whether or not it ever owned or was interested, either directly or indirectly, in the stock of that company or any other securities that it may have issued or had outstanding? A I will say that to the best

of my knowledge and belief it never, directly or indirectly, had any ownership in the stock or other securities of the Metropolitan Steamship Company of New Jersey.

Q What have you to say as to whether or not the New Haven Company or any of its subsidiaries during the term of your office as president had any interest, directly or indirectly, in the Metropolitan Steamship Company of Maine? A None to my knowledge.

Q It appears, Mr. Mellen, by the evidence in this case, that there were two Metropolitan Steamship Companies of Maine, one which was organized a good many years ago, and which went into the hands of a receiver in 1908, and another one which was organized in March, 1910, and which followed the receivership. My question is intended to cover both of those companies. Did the New Haven or any of its subsidiaries have any interest, directly or indirectly, in either of those companies? A Not to my knowledge.

Q So far as you know, or have any reason to believe, did it ever own any of the stock or other securities of either of those companies, or was it ever interested, directly or indirectly, in any such stock or securities? A Not to my knowledge.

Q It is charged in the bill of complaint in this case that the New Haven company, New Haven Railroad Company, was responsible for and caused the incorporation of the Metropolitan Steamship Company of Maine, No. 2; that is the company that was formed in March, 1910. Did you have anything whatever to do with the formation of that company? A I had nothing to do with the formation of that company, but at that time there was in contemplation the fact that I might have something to do with it later on.

Q Well, as a matter of fact, did you take any part or were you in any way responsible for the incorporation of the company? A I think the fact of the incorporation I was familiar with. I had nothing to do with taking part except that at a certain stage of the proceedings I required my name to be withdrawn.

Q Now, the company to which my questions are directed is the Metropolitan Steamship Company of Maine, No. 2, formed in March, 1910, and is not the company that was gotten up by Mr. Reid? A I was referring to the company gotten up by Mr. Reid regarding which he has testified.

Q I was not asking you about that company? A I supposed that was the Metropolitan Steamship Company, No. 2.

Q No; the Metropolitan Steamship Company, No. 2, was formed under the laws of Maine in March, 1910. A I don't carry the dates very well in my mind. Perhaps I can straighten that out in this way: There was a company that Mr. Reid was instrumental in forming that I expected at one time I might have something to do with. I supposed that was the company you referred to as Metropolitan Steamship Company, No. 2. That is the only company that I have had the remotest knowledge of connected with the Metropolitan Steamship Company, of any description or any number or any state.

Q I show you, Mr. Mellen, a copy of the amended bill of complaint in this case to which there was attached several schedules, one of which is Schedule G, which is a copy of the certificate of incorporation of the Metropolitan Steamship Company of Maine, incorporated under date of March 1, 1910. I will ask you to

look at that certificate of incorporation, and I call your attention particularly to the names of the incorporaors and stockholders, who were Joseph E. Chase, Grover C. Richards, John Johnson, Harry L. Ryder, E. M. Hinckley and William M. Green, all of Portland, Maine, and ask you whether or not you, or as far as you know or have any reason to believe, the New Haven Railroad Company had any part whatever in the formation or organization of that company, or were responsible for it? A None whatever. (Witness refers to Exhibit C. 15, appearing on page 198 of the record.)

Q Mr. Mellen, so far as you know or have any reason to believe, did the New Haven Company, or any of its subsidiaries, have anything whatever to do, either directly or indirectly, with the formation of the Pacific Navigation Company, a corporation of the State of New Jersey?

*Mr. English.* I think we ought to object to that part of the question which asks the witness what he had reason to believe, and move to strike out that part of the question.

A I have no knowledge whatever of the Pacific Navigation Company; never did have any.

Q Did you ever hear or learn in any way whatever that the New Haven Company or any of its subsidiaries owned any of the stock or other securities of the Pacific Navigation Company, or were interested, directly or indirectly, therein? A I have no knowledge of any such matter.

Q The company to which I am directing your attention now, Mr. Mellen, is the company which is at present operating, according to the evidence in this case, the Yale and Harvard on the Pacific

coast, and it is as to that company that I want to know these things? A I know nothing about it.

Q I want to ask you next, Mr. Mellen, as to what interest, by stock ownership or otherwise, if any, the New York and New Haven and Hartford Railroad Company, or any of its subsidiaries, had during your period of office, either directly or indirectly, in the New England Securities Company? A None, so far as my knowledge goes.

Q Do you know of the existence of that company at all? A I do not recall that I ever heard of it, except in connection with these proceedings, the papers, reports.

Q What you have seen in the newspapers, you mean? A That is all.

Q What about the Chilmark Company, a corporation of the State of New York? A The same answer as to the New England Securities Company.

Q So far as you know, the New Haven and none of its subsidiaries has any interest whatever in the Chilmark Company, and never had? A I have no knowledge of the Chilmark Company; I have never known there was such a company until these proceedings began, and the New Haven railroad, no one connected with it, so far as my knowledge goes, had any interest in it whatever.

Q I want to ask you the same question with reference to the Eastern Securities Company, a corporation of the State of Maine? A The same answer in every respect.

Q That is that— A Had no knowledge regarding the Eastern Securities Company, no interest by the New Haven or any of its subsidi-

aries in any of the securities of the company, so far as my knowledge goes.

Q Mr. Mellen, is your knowledge of the affairs and transactions of the New Haven Railroad Company during the time that you were its president sufficient to enable you to say whether or not any of its funds or the funds of any of its subsidiaries ever went into any of these companies, or other securities—by these companies I mean the Metropolitan Steamship Company of New Jersey, the Metropolitan Steamship Company, No. 2, of Maine; the Pacific Navigation Company, the New England Securities Company, the Chilmark Company, Eastern Securities Company and Eastern Steamship Company? A I do not see how it would have been possible for any investment to have been made in the securities of any of those companies without my knowledge, consent and approval.

Q Have you any knowledge of any such investment, either directly or indirectly, in any of those companies, or the stock of any of those companies, or any other securities of any of those companies? A I have not.

Q Mr. Mellen, what interest, if any, did the New Haven or any of its subsidiaries have in the Eastern Steamship Company, the predecessor, I mean, of the present Eastern Steamship Corporation? A None.

Q When the Eastern Steamship Corporation was formed, in or about January, 1912, did the New Haven acquire any interest in that corporation. A Not by purchase, but by sale of the Maine Steamship Company property it became a large holder of the securities of the Eastern Steamship Corporation.

Q And its interest in the securities or ownership in the securities of the Eastern Steamship Corporation came about only in that way? A That is the best of my knowledge and belief.

Q Do you remember the number of shares, or approximately the number of shares of either preferred or common stock that the New Haven system has in the Eastern Steamship Corporation? A I do not, but it is a matter of record; it was published in full in the annual reports of the company.

Q Has the New Haven Railroad Company or any of its subsidiaries ever had any representation on the board of directors of the Eastern Steamship Corporation? A Not to my knowledge.

Q Has the New Haven or any of its subsidiaries, so far as you know, ever sought to influence, either directly or indirectly, or to in any way control the management of the Eastern Steamship Corporation? A Not so far as my knowledge goes. We considered that was purely an investment held for sale when we got a good opportunity.

Q And by which of the subsidiaries of the New Haven system is that investment held? A By the New England Navigation Company, I think.

Q Do you remember whether or not the old directors of the Eastern Steamship Company continued as the directors of the Eastern Steamship Corporation after the latter was formed? A I could not say.

Q You don't remember whether there was any change in the board or not? A No change so far as I know, but there might have been a change and I not know it.

*Charles S. Mellen, direct.*

Q In any event, the New Haven and any of its subsidiaries has never acquired a representative on that board? A No, never asked for any.

Q Have any efforts ever been made by anyone to interest you or the New Haven Railroad or system in the properties which were acquired by the Metropolitan Steamship Company of New Jersey from the receivers of the old Metropolitan Steamship Company of Maine, including the steamships Yale and Harvard and certain freight boats which were operated between Boston and New York? A There have.

Q Now, Mr. Mellen, will you tell us what those efforts were and what the outcome of them was? In the first place, how many of them were there, if you can separate them? A The parties?

Q Yes.

*Mr. English.* Mr. Mellen ought to fix the time.

Q In each case fix the time as definitely as you can. A It is very difficult for me to fix the time.

Q If there was more than one of them tell us about the first of them, please. My impression is that before the Harvard and Yale were put on I had several interviews with Mr. Morse.

Q Mr. C. W. Morse? A Mr. C. W. Morse; after they were put on I had several interviews with a Mr. McGovern and Mr. Goodall of San Francisco. I think I met Mr. McKinnon, of the Assets Realization Company, and another gentleman whose name I forget was connected with it?

Q Mr. Carrington? A I think that is the man. I think I met Mr. Reid in connection with the matter, Walter E. Reid.

Q Of what state? A Waterville, Maine; he has testified, I think, in this case.

Q Not in this case? A It is at Washington he testified; I have got the two mixed up.

Q Now, will you please tell us just what each of these negotiations consisted of? A I can not.

Q And what became of them, if anything? A I can not. They all were abortive, they all fell through; I can not give the details. I will try and answer any questions about them that you might ask, but I could not give a connected story. I know I discharged them from my mind as abortive; they amounted to nothing, they were dropped, all of them.

Q I show you a letter addressed by C. S. Mellen, president, to Mr. H. W. Goodall, New York, and dated January 7, 1910. Is that a letter that you sent Mr. Goodall at that time? A That is my letter all right.

*Mr. Faulks.* I will offer that letter in evidence, and, as it is short, I will read it right into the record.

"The New York, New Haven and Hartford Railroad Company. New Haven, Connecticut. President's office at New York City, January 7, 1910. Mr. H. W. Goodall, New York, N. Y. Dear Sir: We have given consideration to your offer to sell to this company certain steamships for $1,500,000, but have come to the conclusion that it is impossible to accept it. Yours truly, C. S. Mellen, President."

(Marked Exhibit D. 1.)

Q Now, does that letter follow the last of the negotiations of which you have told us? A I should think that was about the conclusion

of everything; I don't see why it should not have been; so far as I know at the present moment that is the end of everything.

Q And so far as you know there were no negotiations had by you with Captain Goodall or any one else with reference to these properties after that time? A That is the best of my recollection.

Q Now, what were these negotiations with Captain Goodall or anybody acting on your behalf in regard to these matters? A After this date?

Q No; I mean, the first; I am asking you about these negotiations, what they were, what they were about? A As I recall it, Captain Goodall was very anxious to secure the Yale and Harvard for service on the Pacific coast. He tried to induce me to acquire the freight steamships which he did not want. The whole transaction seemed to be too large a one for him to handle; he thought he could handle the Yale and Harvard if he could get rid of the freight steamships, and I was disposed to consider, and did consider for quite a period of time, whether or no we could acquire, whether it was desirable for us to acquire the steamships. We decided we could not do it.

Q Which steamships? A The freight steamships.

Q Did you consider, either then or at any other time, the acquisition or possible acquisition by the New Haven Company or any part of its system, of the passenger boats the Yale and Harvard? A There was never any consideration given to that except in a suggestion or proposition made by Mr. Morse.

Q At or about the time they were built that was, I judge from what you said before? A I

think before they were completed there was some talk with Mr. Morse, and I think after they were put in operation, and just before Mr. Morse—the sentence against him under which he went to the Tombs, I think about that time there was another proposition which I was considering from Mr. Morse about that time; that was not to acquire, that was not in any sense to acquire the steamships, but it was to acquire an interest in the company which owned both the passenger and freight steamships.

Q That was before the receivership of the Metropolitan Steamship Company of Maine? A No; that was after the receivership, and it was while the reorganization was pending, and had not been completed, and the company that I was to have an interest in was a company that was organized or to be organized for the purpose of acquiring all the assets of the old Metropolitan Steamship Company held by the receivers.

Q And is that the company that you have spoken of as the one that was to be organized by Mr. Reid? A Yes.

Q And is that one of the negotiations which you have said was abortive? A That was abortive; that died aborning, as Mr. Reid expressed it down at Washington, that scheme.

Q No securities were ever issued or acquired by anybody? A So far as I know, no.

Q Now, you were telling us a minute ago about your negotiations with Captain Goodall, and his desire that the New Haven should acquire these freight boats in order that he might be able to get the Yale and Harvard for himself. I think you did not conclude the story, Mr. Mellen. You said you were consider-

ing the possibility of acquiring the freight boats? A That was abortive. I put it up to my directors and they were unwilling, and I put it up to my counsel and he was unwilling. There were complications, legal complications which I do not clearly carry in mind, some conflict in the law which rendered it doubtful that we had the right—

Q (*By Mr. English.*) When was that? A Prior to the declination.

Q That was prior to this letter of January 7, 1910, Exhibit D. 1? A Yes.

Q You say you put it up to your counsel; you mean, counsel for the railroad company? A Yes.

Q And who was that at that time? A I think I took counsel of two parties, Mr. Robbins, and Mr. Ledyard.

Q Mr. E. D. Robbins? A Yes.

Q And Mr. Lewis Cass Ledyard? A Yes, Lewis Cass Ledyard.

Q Did you say they gave you some advice in regard to the matter? A Mr. Ledyard said he could not approve of it, he would not approve of it. Mr. Robbins thought it was of doubtful legality, and I think as the result of their advice I dropped proceedings, negotiations.

Q In any event the negotiations were dropped and this letter was written? A Yes.

Q Now, was there ever any subsequent negotiations of any kind, as far as you know, on the part of yourself or anyone representing the New Haven system with reference to the acquisition or possible acquisition by it of either these freight boats or the Yale and Harvard, or any interest in them, or any interest in the companies which owned them? A None that I recall.

*Charles S. Mellen, cross.*

Q Could negotiations of that kind have occurred by the company or anyone authorized to speak for it, without your knowledge?

*Mr. English.* We object to that as an improper question. What could have happened is a matter which this witness or nobody else can testify to.

A Under the rules and regulations of our board of directors, and having been present at every meeting of every committee, or every meeting of the board during the whole period I was connected with the company, I should say it would have been utterly impossible that any person with authority could have had the negotiations without my knowledge.

*Cross examination* by Mr. Littleton.

Q How many subsidiary corporations did the New Haven Company have? A It is impossible for me to state from memory, but a very large number.

Q Approximately? A There were, I think, sixteen operating companies whose results had to be combined to enable me to know what the New Haven Railroad Company was doing. There were other companies that were dormant and did no business, the leased line companies, for instance.

Q What variety of business did the subsidiary companies do? A Pretty near everything except vote.

Q You controlled those, didn't you? A We controlled all the companies that were doing business of every character owned by the New Haven road.

Q Roughly speaking, you see the point of my inquiry, you say to the best of your knowl-

edge and belief and understanding the New Haven Company did nothing to acquire an interest in the Metropolitan Steamship Company of New Jersey. Your knowledge and belief necessarily would be the limitation of your testimony, and therefore I wish to know the number of subsidiary companies that the New Haven Company had? A It would be, of course, impossible for me to state from memory the number; I should say there were probably thirty-five or forty different corporations comprising the activities of the New Haven system. Those might be amplified, perhaps, to one hundred or one hundred and fifty, if you took what were absolutely dormant companies that simply preserved their organization against a possibility that they might be called into life to do something.

Q You think the total of those active and those dormant would be one hundred and fifty? A I would think they could not be comprised in much less number than that.

Q How many subsidiary companies did the New Haven have which had to do with the shipping and transportation by water? A Possibly half a dozen.

Q Do you recall the names of those companies? A New England Navigation Company; New England Steamship Company; Hartford and New York Transportation Company; Joy Steamship Company; New Bedford, Martha's Vineyard and Nantucket Steamship Company; United States Transportation Company. There were many others that were afterwards merged into these. We were gradually getting rid of the companies, combining them into one company. I omitted to mention the Merchants

and Miners and Boston and Philadelphia Steamship Company.

Q Maine Steamship Company? A Maine Steamship Company.

Q Your object was, of course, in the interests of economy and management to eliminate as many of the companies and get them under an economical control of one company? A That was the object.

Q To what extent did you control the transportation by water from along the New England states?

*Mr. Faulks.* I object to that as irrelevant and immaterial and not cross examination.

*Mr. Ward.* We make objection on the same grounds.

A Very largely in control of the situation.

Q Where did the various offices of these subsidiary companies—where were they located? A Well, partially in New York, partially in New Haven.

Q Elsewhere? A I am unable to say. If you will mention any company I could locate it, but largely in New York and largely in New Haven. They had local offices in the different ports.

Q These companies were officered, were they not, by different groups of men? A I think I was president of nearly all of them, but everything that was subsidiary to the New Haven the New Haven's president was president of.

Q But, I mean, there were other officers such as vice presidents and secretaries and treasurers, etc? A There were.

Q They had their complement of directors, the boards of directors? A They did.

Q And they transacted their business, such of them as were active, through the various agencies and offices they had? A They did.

Q I don't suppose, Mr. Mellen, you attempted to give your personal attention to the details of these companies? A Not to the details.

Q You were the president, you say, of most of these companies as you recall it? A I was.

Q Your company, and you for your company, were interested in what you concede to be a legitimate way, in the control of the transportation, or in all events in getting all the business you could by way of transportation from New York to Boston or New England, were you not? A We were.

Q It had been for this purpose that you had from time to time enlarged your control of the water transportation, had it not? A It had.

Q If it had been feasible you were not unwilling to acquire the other independent lines which operated between New York and the New England states? A If it had been legal.

Q I say that. A We were not unwilling.

Q When I use "feasible" I mean feasible in the sense that it would not involve you in a charge by the company with anything wrong. It was feasible, I suppose, in every other way? I mean, I suppose there was a price and it could be bought? A Assuming it was proper price and there were no legal complications we were desirous of controlling the transportation.

Q That being the general situation in regard to transportation, do you recall when Mr. McGovern came to see you, Mr. Thomas B. McGovern, I mean, generally, the first time, about the first time he came to see you? A I carry it a little hazy in my mind. I think he came to see

me through the influence of Mr. Campbell, who was our vice-president.

Q Mr. Benjamin Campbell was vice-president of the New Haven? A He was and is.

Q And is it not a fact that Mr. McGovern was introduced to you, or in all events, brought in touch with you by Mr. Campbell? A I think so.

Q Do you remember where Mr. McGovern called on you? A I think it was in my office in the old Grand Central Station, New York.

Q Did Mr. Campbell bring him in? A I think so.

Q Were you advised by Mr. Campbell what the object of Mr. McGovern's visit was? A In a very indefinite way, yes.

Q You had not know Mr. McGovern before that? A I had known of him in a business way when I was in the Northwest.

Q Well, generally speaking, he had been in the business of buying and selling steamboats, hadn't he, and things of that sort—watercraft? A I had the impression that Mr. McGovern at the time I knew him was connected in some way with the salmon canning industry out on Puget Sound.

Q Perhaps at that time? A I carry him in my mind as connected more particularly with that business than any other.

Q Do you remember the conversation between you and Mr. McGovern on the occasion of his introduction to you by Mr. Campbell? A I don't recall it particularly.

Q Well, do you recall the substance of it, Mr. Mellen? A It was in connection with securing the Harvard and Yale, I know that.

Q At that particular time do you know the exact status of the properties which had hitherto been in the hands of the receiver of the steamship company in Boston? A I do not, but my impression would be that they were not in the hands of the receiver at the time I first met Mr. McGovern.

Q You mean, they had passed under the receiver's sale— A No; I am inclined to think my first interview with Mr. McGovern was while they were being operated.

Q Before the receivership? A Before the receivership; that would be my best recollection; I may be mistaken, though.

Q You know that the receivership which finally resulted, or which was finally had, resulted in the appointment of Mr. Austin and others, two others, as receivers for this line? A I remember the appointment of Mr. Austin; I could not recall the others.

Q Then you recollect, do you not, that the receivers, at a receivers' sale, the property passed to representatives of what was supposed to be a reorganization committee? A I do.

Q Now, do you recall Mr. McGovern coming to see you at a time after this receivers' sale and when the property had passed into the hands of the Assets Realization Company, or those who represented it? A I remember Mr. McGovern calling upon me several times, but I can not fix definitely the time; I would not in the face of anybody's saying he did call on me at that time, I wouldn't deny it.

Q You knew Captain Goodall of California pretty well, didn't you? A No; I never met Captain Goodall until he came to see me on this transaction; I knew a Captain Goodall whom I

think was an uncle of this Captain Goodall, who was a member of the firm of Goodall, Perkins & Company of San Francisco; they were the agents of the Oregon Railway and Navigation Company when I was general traffic manager of the Union Pacific, and I used to meet them quite frequently in business matters in San Francisco at that time; that is twenty-odd years ago. This young man I don't think I ever met until he came to see me on this matter.

Q It is my impression, and perhaps you can correct it, that Mr. Goodall, the one that came to see you, is the son of the Goodall whom you knew? A Maybe; I thought he was his nephew.

Q You are not sure about it? A I am not sure; I thought he was his nephew.

Q When Captain Goodall came to see you he came as far as that was concerned a stranger to you? A I think he was brought by Mr. Campbell.

Q The same Mr. Campbell who brought Mr. McGovern? A Yes.

Q How many interviews did you personally have with McGovern regarding the possible purchase of the Harvard or Yale, or the Harvard and Yale by themselves, or with other property included? A I would be unable to fix the number; I would express it as several; several might mean three or four; I should not think over three. I would not deny it if you said it was four or five, but I think about three times.

Q You saw him once in this city, did you not, in New Haven, Mr. McGovern? A I think I saw both Mr. Goodall and Mr. McGovern in New Haven.

Q Are you sure the introduction was in New Haven or New York? A My best recollection

would place it in New York. I would not want to dispute very strongly it was in New Haven.

Q Do you recall that Mr. McGovern said to you that he had people on the Pacific coast who were interested in taking the Yale and Harvard, or substantially that? A Substantially that statement was made to me either by Captain Goodall or Mr. McGovern.

Q Did he state to you that he had for sale the assets of the old Metropolitan Steamship Company which had passed by the receivers' sale to the reorganization committee or their representative? A I don't think he did; my impression was that he was in a position to obtain them if we would help him out on the freight boats.

Q To refresh your recollection, if it does not refresh it at all, I will call your attention to one or two facts: Don't you recall that he said that all of the freight ships and wharf in Boston and Yale and Harvard were for sale, and that Goodall came there with him as a man particularly interested in acquiring the Yale and Harvard, or having the Yale and Harvard taken to the Pacific coast? A I would not dispute that; I don't particularly recall it; it is in my mind that that was the errand they were all interested in, both parties.

Q Wasn't it, as it comes back to you now; isn't it a fact that he said he had purchased the Yale and Harvard and he wanted you—he came to you for the purpose of having you purchase the balance of the property? A There was no question but what that was his errand; I don't recall just exactly how it was presented, or by whom; there is no doubt but what the interview between Mr. McGovern and Mr. Goodall on the one part and myself on the other were for the

purpose of persuading me to help them get the Yale and Harvard by taking the wharf in Boston and the freight boats.

Q In other words, the whole transaction, the sale, could be financed by them? A If we relieved them to this extent.

Q If you took the freight boats and the wharf they felt quite sure of a disposition of the Yale and Harvard? A Absolutely that is the way I carry it in my mind.

Q They did not attempt to sell to you the Yale and Harvard? A No, I don't think anybody ever attempted to sell those boats to me by themselves or give me an interest in them by themselves.

Q Now, you had a final interview with Mr. McGovern after the one to which I have drawn your attention, at the Grand Central Station in New York? A I had several interviews, whether the final one was there—

Q There must have been a final one? A I think probably you are right.

Q I am referring to it for the purpose of refreshing your recollection, if I can. Do you recall when Mr. McGovern came there to see you when others were present, officers of your road or directors? A I don't recall any interview at which any officers of the road were present unless possibly Mr. Campbell may have come in. Mr. Robbins and Mr. Lewis Cass Ledyard, I distinctly remember one interview at which Mr. Robbins and Lewis Cass Ledyard I feel sure were present.

Q That is the one, perhaps, to which I refer? A Possibly.

Q Do you recall, to put it in a direct question, an interview had with Mr. McGovern at

which Mr. Robbins, Mr. Ledyard and yourself and possibly some other one, no name given, were present? A I think I do.

Q Did you introduce Mr. Robbins and Mr. Ledyard to Mr. McGovern or him to them? A I should certainly have done so if they had all been present.

Q What was the object of the interview that you had with Mr. McGovern? A Mr. McGovern had no business with me except this particular business to which I am testifying.

Q And was the project which he had in mind presented to you in connection or in company with Mr. Robbins and Mr. Ledyard? A I should assume so.

Q Is that your recollection? A My best recollection is that there would have been no occasion for him to have been there other than to consider this matter, and necessarily I would have acquainted Mr. Ledyard and Mr. Robbins with all Mr. McGovern was after, but as to recalling the particular things that were said it is impossible.

Q Mr. Robbins was your adviser; adviser for the New Haven road? A He was.

Q And was general counsel for the New Haven Company, was he not? A Yes.

Q Had been for how long? A I think he became connected with the company in that capacity in the fall of 1906.

Q Did Mr. Ledyard sustain any relation as an attorney or lawyer to the company? A No.

Q Was he a director? A He was.

Q Was there an executive committee of the New Haven Company? A There was always an executive committee of the New Haven road.

Q Was he a member of the executive committee? A The records will show, but I should assume that he was at all times during his connection with the company, because he was a very prominent man; took a very active interest in all the affairs.

Q Did Mr. Robbins hold any position in the company other than counsel? A At one time he was a member of the board of directors, I think, for a short period.

Q Was he not vice-president at one time? A Never, to my knowledge.

Q To what extent on this occasion did Mr. McGovern outline the proposed sale of the freight boats and the wharf? A I cannot recall anything beyond the fact that he was anxious for us to buy the freight boats and the wharf, which would leave him in a position to go away with the Yale and Harvard, but as to the details of what was said, and who said it, I could not recall it.

Q Did Mr. Goodall accompany Mr. McGovern to this conference, Captain Goodall? A That would be my best recollection.

Q Do you recall whether or not Mr. Goodall or Mr. McGovern said on that occasion to you and the other gentlemen whom you have named they had a proposition from the Assets Realization Company to sell the entire assets of the Metropolitan Steamship Company, and that Captain Goodall with associates of his was prepared to buy the Yale and Harvard, and asked whether your company would be willing or would buy the other assets of the Metropolitan Steamship Company? A I carry clearly in my mind that that is what was said at some time; I carry in my mind that that was the situation that was

presented to me at some time; I can not place the time; I can't say it was at this interview; it may have been.

Q. At an interview at which these gentlemen were present? A I think that is right.

Q Was there ever any other interview between McGovern and Goodall on the one side and yourself and Mr. Robbins and Mr. Ledyard and possibly others on the other? A None that I recall.

Q Do you remember saying to Mr. McGovern and Mr. Goodall, or to either of them on that occasion, that the proposition for the purchase of the freight boats and the wharf on the whole and in a general way seemed like a good one to you? A I don't recall what I may have said, but I should say if I knew the figures of the proposition, if they appealed to me, I should say in general that proposition would have appealed to me, but I do not carry in my mind just exactly what the proposition was.

Q This is for the purpose of calling your memory as nearly as I can back to it. Do you recall that something like I have recited to you occurred, and at that juncture in the negotiations or conversation Mr. Robbins said that he wished time to think the matter over before closing? A Mr. Robbins is a lawyer, and I never saw a lawyer that time had any terror for, and I should presume that he should take all the time that he could possibly take to consider anything.

Q Well, having paid this more or less undeserved tribute to the bar, may I ask you now to answer my question? A I do not recall that Mr. Robbins said anything in particular at that time; I won't deny that he had said it.

Q Do you remember how long the interview lasted? A I do not; probably as long as my visitors desired to stay.

Q Your time seems quite as unimportant as the lawyers'? A Very much so, especially when I am dealing with lawyers.

Q Mr. McGovern was not a lawyer, was he? A No, but Mr. Robbins was and Mr. Ledyard was.

Q You were there dealing with Mr. Robbins and Mr. Ledyard? A I was depending upon their advice in my dealings with the others.

Q That is an important answer. And did not Mr. Robbins say on that occasion, having regard to the fact that you were dependent on his advice, didn't he say now to you, in substance, "Hold on about this; I want to look into it; I don't want to close anything." A Now, he might; from my experience with Mr. Robbins that seems a most reasonable statement for him to make, therefore, I should not deny that he said so.

Q Did you give Mr. Robbins any directions or instructions in reference to preparing a letter accepting the proposition? A I don't think so; I would not have done such a thing until Mr. Robbins made his report.

Q Perhaps I unintentionally got you a little backwards or got my question a little backwards. Isn't it a fact that you instructed Mr. Robbins, or directed him to prepare a letter which in general terms accepted the proposition, and isn't it a fact that when you did so instruct him he said to you in substance to hold on, that he wanted to look into this before closing it? A I don't recall any such circumstance as that; I do not think the matter had proceeded

that far; I don't think I was prepared to do anything of the kind.

Q Didn't Mr. McGovern request a letter from you which would sanction the general terms which he had submitted to you? A It may be so, but I have no recollection of it.

Q Do you remember the price that was named for the property at that interview? A I do not.

Q Was anything said to you by Mr. Robbins at that time, or by Mr. Ledyard, that the reason for wishing to look into it was legal objections that might arise? A I recall particularly that Mr. Ledyard was quite opposed to our having anything to do with the Metropolitan Steamship Company in any form; whether he expressed himself so at that interview or at other interviews, I would be unable to state.

Q Perhaps my question did not reach you as I intended it, Mr. Mellen. Was there at that interview, as you recall, any suggestion made that the proposed purchase would be forbidden or was forbidden by any existing statute? A I could not say at that interview that there was any objection of that kind. I know Mr. Robbins wanted time, and I know that Mr. Ledyard was, generally speaking, averse to my entering into the transaction at all.

Q A letter has been introduced which was written by you to Mr. Goodall on January 7, 1910, in which you say you had given consideration to an offer to sell certain steamships for $1,500,000. That was the price, was it not, that they had offered? A It must have been.

Q This letter, this original which is produced here, would ordinarily be in the hands of Mr. Goodall. I suppose he furnished you

with it? A No. My letters were written in this way, they were written in duplicate, and the carbon sheet, I signed both of them; I can't tell whether that was sent to Mr. Goodall or whether that was the copy; I presume that was the one sent to Mr. Goodall, or whoever it was addressed to. My letters were all written in duplicate, and sometimes the boys would send the duplicate and sometimes the original.

Q If this is the original do you know how it got back here? A I have no knowledge of it, haven't seen it from that time.

*Mr. Ward.* May I state that the exhibit in question was produced from the files of the Pacific Navigation Company?

A Then it must be the letter I sent.

*Mr. Faulks.* I want to state that the letter Exhibit D. 1 was handed to me by Mr. Ward, of counsel for the Pacific Navigation Company, this morning, and that he told me at that time that he had obtained it from the files of that company.

Q Mr. Mellen, how long after the interview to which I have referred did you write the letter Exhibit D. 1? A I do not place the date of the interview to which you refer, therefore, I am unable to answer.

Q Well, I did not undertake to give the month, but I thought you might give us approximately how long it was after the interview at which Mr. Robbins and Mr. Ledyard were present that you wrote the letter Exhibit D. 1? A Well, judging from the fact that the legal profession had charge of the matter I should think several weeks must have elapsed.

Q Did you receive from Mr. Robbins any report as to the matter about which he sought

this lawyer's delay? A The general impression I am under is that I had no written report. That is another failing I have observed in the legal profession, that they hesitate about placing themselves upon record.

Q It would not be unfortunate for others, would it, Mr. Mellen? A Well, it might be.

Q Mr. Mellen, do you recall whether, either by writing or otherwise, you had a distinct report from Mr. Robbins, who had held up, and I mean in the proper sense, the interview by saying that he wished to look into it? A My impression is strongly that Mr. Robbins made no written report, and that that letter was written as a result of a conference I had with Mr. Robbins.

Q Did Mr. Robbins advise you before you wrote the letter, and after the interview had been had, as to the legality of the proposed sale or purchase? A My general recollection is that everybody, Mr. Ledyard and Mr. Robbins, concluded it was an inadvisable purchase to make, from a legal standpoint.

Q Well, to get a little more closely to the point, a little closer to the amount and a little more closely to the issue, were you advised by Mr. Robbins or Mr. Ledyard, or both of them, that the purchase outright of the freight boats and the wharf in the manner proposed by McGovern and Goodall would be a violation of law? A My best recollection would be that they did advise it was impossible for the New Haven Railroad to meddle with that transaction, they better let it alone, from a legal standpoint, and I dropped it, and that was the occasion of this letter.

Q Did they advise you as to whether the taking of the physical property by the New Haven

road in the manner proposed would be an illegal transaction? A I don't think that was discussed; I think the whole subject was the question whether or no we should become interested, either as stockholder or direct owner of this property, and I do not recall whether the objection was to either one or both; my impression is it was to either one and both.

Q Well, it was on the strength of this advice, whatever form it assumed, that you wrote the letter Exhibit D. 1 to Captain Goodall? A I should say so; I have no doubt.

Q And your declination as placed upon the record by this letter was based upon the fact that you were advised that it was illegal, broadly, to acquire the property? A That is my best recollection; I do not recall distinctly. I carried in my mind that I was advised to let the thing alone, and I let it alone. Now, the detail of that advice I do not recall.

Q I didn't mean to ask you for the detail. The larger feature of that advice, the very center of it, in fact, would be whether, having under consideration the purchase of this property, which was desirable, which fitted in with the general transportation development of which you had been at the head for many years, and having before you the price at which it was fixed, and having had the question raised as to whether it was legal or not, and having been advised not to do it, by your legal adviser, the question I ask you is, did you decline to do so because you were advised by Mr. Robbins that it would be illegal to do it in the way proposed? A My best judgment would be that I declined to make the purchase, and wrote to Mr. Goodall because I was advised it was not anything we

could afford to do, in view of the legal complications.

Q Did you have any further communication, directly or indirectly, with Mr. McGovern? A I don't recall any.

Q Or Captain Goodall? A I do not recall any, and yet I should not be surprised if I were confronted with a communication. I don't know of any reason why they should have written me. I concluded all my relations with them by that letter.

Q How intimately were you associated with Mr. Robbins? A Very intimately.

Q And how frequently did you meet him? A A dozen times a day, when he was in reach, and telephoned when he was not in reach.

Q Mr. Robbins devoted, did he not, his time to the vast and intricate and interesting problems which were presented by your company? A Not always, no; he had an understanding, agreement, with me when he was employed as general counsel that he should not be required to drop several clients that he had, and that he should not be debarred from taking others, but they were not to interfere with his business, the railroad's business.

Q I take it, however, from your description of the intimacy of your association and the frequency of his calls upon you, both by telephone and personally, that he did give a great deal of his time, the larger part of his time to the New Haven Railroad? A I think his outside interests did not conflict at all with his duties to the railroad.

Q Who acted as counsel for the subsidiary companies? A Mr. Robbins.

Q Was there any other counsel for these number of subsidiary companies to which you have referred? A Mr. Bucklin attended to our legal business for all Rhode Island subsidiaries, our general business in Rhode Island.

Q But, as I understand it, Mr. Robbins had the general supervision of the legal business of the New Haven Road and its subsidiary companies? A I so considered it.

Q Committee reports get to him? A Oh, yes.

Q Were the contracts of the various companies, their arrangements, passed on by him? A Excepting they were Rhode Island contracts, yes.

Q And did the legal advice as to the acts and duties of the subsidiary companies get to him? A It did. I depended upon Mr. Robbins more than upon any other one man.

Q Mr. Mellen, do you know that after you had written to Mr. Goodall that Mr. Robbins continued negotiations with Mr. McGovern for the purchase of these freight boats and this wharf? A I understood Mr. Robbins was connected with some other—

Q Just answer my question. A I do understand that Mr. Robbins was connected in some way with Mr. Goodall and Mr. McGovern afterwards.

Q Did you know that at the time that it took place, were you aware of the fact that after your declination Mr. Robbins continued to negotiate with Mr. McGovern, and later on the Assets Realization Company, for the purchase of the freight boats and the wharves? A I did not know anything about it until I heard of these proceedings.

Q Did Mr. Robbins advise you of the fact that he was having frequent interviews with Mr. McGovern and finally interviews with the Assets Realization Company looking toward the purchase of the freight boats and the wharves? A To the best of my knowledge and belief he said nothing to me about it.

Q Was anything said to you at that time, or were you aware of the fact that he was negotiating with Mr. McGovern and the Assets Realization Company, Mr. Robbins, looking to the purchase of the securities of the Metropolitan Steamship Company? A Never knew anything about it except as I,—I am confused as to dates because I have seen so much about this case in the papers, I know more about Mr. Robbins' connection with it as a result of inquiries I made of Mr. Robbins from things I have seen in the newspapers, that is practically all the knowledge I would have. Let me give you an example. I would read a piece in the paper that Mr. Robbins had done this, and at the next interview I would say, "Robbins, what is there about this?" and that is the only way I would get my information at all.

Q Did you know that Mr. McGovern was going to the Grand Central Station to Mr. Robbins' office after the time when you had declined this proposition, and continuing the negotiations looking to the acquisition of the freight boats and the wharves or the securities which controlled them? A I knew no more about Mr. McGovern going to Mr. Robbins' office than as if he were keeping half a dozen women and they were going there. I never kept any watch of him at all; I didn't know anything about it, who his visitors were or what their errands were.

*Charles S. Mellen, cross.*

Q Did you know shortly after your declination of the offer to buy or to sell by Mr. McGovern that Mr. Robbins in communication with Mr. McGovern advised him he was desirous of purchasing the property for some company other than the New Haven road? A I knew absolutely nothing about it.

Q Then I take it that the subsequent history of the transfer of the securities, or part of them, from the Metropolitan Steamship Company of New Jersey, and the release of the mortgage upon the freight boats and the wharves, and the taking over of those through the various channels which the record discloses, is a matter about which you knew nothing? A Knew nothing about it, except these people insisted that we had something to do with it, and I had to go to Mr. Robbins for information; my information was that he was not acting for the New Haven Railroad in any way, shape or manner, that he had other clients.

Q You said that you were asked if you were acting in the matter, people asked you about it. Who was it that asked you that caused you to go to Mr. Robbins? A George A. Fernald was an old friend of mine in Concord, New Hampshire, where I was brought up, my father and mother lived there,—had known him a great many years; he had lost some money, and he was particularly anxious, as I was anxious and some others were, to connect the New Haven Railroad with the transaction so as to give it some financial standing, and I remember once he called me over the telephone when I was in my Grand Central office, and told me a lot of things that were fairy stories, that would have been very material things had they been true, to have

helped him in his financial difficulties. Every time anything of that kind came to my attention I asked Mr. Robbins if he was sure,—I didn't think he could afford to be mixed up in any such transaction. I got one invariable answer, that whatever he had had to do with the matter, if anything, and he never would admit that he had anything, except that he was employed by outside clients, that whatever he had to do with the matter had nothing to do whatever with the New Haven Railroad,—and that is the situation up to this present moment.

Q In view of that statement can you tell me how it is that the property wound up in the hands of the Eastern Steamship Corporation? A The Eastern Steamship Corporation, that is a transaction with which I have not the slightest knowledge; I only know the Eastern Steamship Corporation, that the interest of the New Haven Railroad was acquired through Maine Steamship Company property, the securities we received were given in payment of that. Regarding the Metropolitan Steamship Company, either of Maine or New Jersey, I have no knowledge whatever.

Q The Maine Steamship Company you did own all the stock of, did you? A I never knew we owned a dollar of it.

Q The Maine? A The Maine Steamship Company we owned every stick, stone, boat and everything else.

Q Do you know that the Maine Steamship Company became the owner of part of this property? A No; no, I don't think the Maine Steamship Company owned any part of this property.

Q At no time? A At no time, so far as my knowledge goes.

Q Do you know where this property is now? A What property?

Q The wharves and freight boats? A I suppose they are in the hands of the Eastern Steamship Corporation.

Q How much of the stock of the Eastern Steamship Corporation does the New Haven road own? A It owns a large amount.

Q How much? A Don't ask me to go in figures. The records, if you will get it, of June, 1913, I will tell you just how many shares of common and preferred stock and bonds. I would say, if you want to know approximately, that there were between thirty and forty per cent. of the Eastern Steamship Corporation owned by the New Haven road on the 30th of June, last Here it is, Eastern Steamship Corporation, preferred stock, fifteen thousand shares, common stock, twenty thousand shares, and bonds, $2,500,000.

Q (*By Mr. Faulks.*) What are you reading from? A I am reading from the forty-second year general statement, New York, New Haven and Hartford Railroad Company of June 30, 1913.

Q The figures you have read shows what? I want this on the record? A It shows the ownership by the New Haven and its subsidiaries, all of them, of the stock and bonds of the Eastern Steamship Corporation, shows the number of shares, the number of bonds, and the book value of each.

Q Now, it appears from this that the New Haven road, the fact really is that the New England Navigation is subsidiary to the New Haven,

absolutely owns every share of stock that the New Haven road does. The New England Navigation Company, which is owned entirely by the New Haven, owns of the Eastern Steamship Corporation fifteen thousand of the preferred shares and twenty thousand of the common stock? A Yes, and two and a half million of the bonds.

Q And two and one-half million of the bonds of the— A Eastern Steamship Corporation; and that represents, as I carry it in my mind, the sum received by the New England Navigation Company, which is the New Haven under another name, for their share of the Maine Steamship Company property.

Q You know that the freight boats and the wharf, wharf property, which was offered you by McGovern, which you declined, is now owned by the Eastern Steamship Corporation, of which the New Haven road, through its subsidiary, the New England Navigation Company, owns fifteen thousand preferred shares, twenty thousand common stock and two million five hundred thousand bonds? A I know it of common knowledge.

Q You have no doubt of it? A I haven't the slightest.

Q Now, will you tell me how the wharf or the wharf property and the freight boats got into the ownership of the Eastern Steamship Corporation? A No, I wish I could; I have puzzled over it lots of times.

Q Why do you puzzle over it? A Because I have been trying because of talks I have had with Mr. Reid and others, I have been trying in my own way to get at the bottom of this

transaction; I run into a *cul de sac* wherever I go.

Q We have got more *cul de sacs* than we can shake a stick at; I wonder if you have any? A We have. I met Mr. Littleton, had a very pleasant conversation with him one evening in regard to this matter; I think Mr. Reid was present. I have met Mr. Morse. I have read no end of newspaper stories. I have been paralyzed at the marching and countermarching I have seen in connection with this matter. It has really excited my curiosity a good deal, as one of these puzzles did, and I have never been able to match it up to my satisfaction.

Q It is beginning to rank with the problem as to who stole Charlie Ross, isn't it? A I hope there is going to be a termination to this; there is apparently none to that.

Q This property that I speak of, the wharf property and the freight boats before it went into the Eastern Steamship Corporation according to your knowledge was where? A The Lord only knows; He never gave an intimation that I could straighten out satisfactorily.

Q Who didn't? A The Lord.

Q It never occurred to me that the Lord had very much to do with this transaction before. A It seems to be very inscrutable and almost all inscrutable things I attribute to the Lord.

Q Well, between the Lord and Mr. Robbins and the New Haven Railroad have you any knowledge at all as to where this property was before it went into the Eastern Steamship Corporation? A If I found the Lord and Mr. Robbins were working in close communion about a matter the New Haven was interested in I should give it up as a bad job.

Q Well, leaving out the source of your information, or the designs of Providence, or the machination of Mr. Robbins, or vice versa, can you tell us in your own way where this property was located before it went into the Eastern Steamship Company? A I can not.

Q Have you any idea who or what owned it before? A Nothing that is worthy of remark.

Q The last you saw of this property, so to speak, where you could really say where it was, was when it was offered to you by McGovern and Goodall? A I do not understand that the offer of Mr. McGovern and Mr. Goodall was an offer of anything they had; it was an offer of something they hoped they were going to get, which was dim and in the future.

Q I mean—I know they didn't have it, we all understand that, but it disappeared with your declination from your observation? A No, the property was always visible, and it has always seemed to be in about the same places and doing about the same business, but the ownership of that property is a puzzle.

Q The property is located, it was wharf or wharves in Boston? A Yes.

Q There were freight boats which carried freight back and forth, is that true? A Yes.

Q You saw them from time to time, didn't you? A Yes, saw them and heard of them, knew their status at all times.

Q Well, after you declined to buy them from McGovern for the reasons which you have assigned throughout the years which ensued did it interest you at all to know who owned those properties? A I always supposed they were located very close to the source of authority of the Eastern Steamship Corporation, but just

exactly in what way, how, I never was able to disentangle.

Q Having had an original desire if legal to acquire the property because it would help you in the general plan which you had regarding transportation, if included, by water and by rail, and having been prevented from carrying out your desire by the doubtless good advice of your counsel, were you not interested to know into whose hands this property fell during these years? A Never had the slightest care for anything—I wasn't going to get myself—used to be absorbed in getting things for myself, but when they got away from me I let them go, didn't follow them any further.

Q That is your answer to that particular question. If you found this line in the New Haven stocking on Christmas morning you would think it came by way of St. Nicholas? A And I should have sewed up the hole in the stocking so it couldn't get away.

Q You are not entirely sure that was not done by somebody else? A If it was it has been carefully concealed from me.

Q Isn't it a fact that the Eastern Steamship Corporation was not organized until January, 1912? A I should not say one way or the other. I think the Eastern Steamship Corporation was organized or perhaps reorganized as a result of the purchase of the Maine Steamship Company.

Q It was organized in January, 1912, wasn't it? A If that is the record, I don't know.

Q I believe that is so. A I wouldn't dispute it.

Q To which and to whom was it a successor? A To the Eastern Steamship Company.

Q Did the Eastern Steamship Company own the wharves and the freight boats? A I don't think so.

Q Well, how did the assets of the Eastern Steamship Company and the wharves and the boats, freight boats of the Metropolitan Steamship Company of New Jersey happen to merge or verge in the ownership of the Eastern Steamship Corporation? A Why, that would be purely a question that I would have to answer not from knowledge but from the way such transactions are generally handled. I have no personal knowledge of how it came about, but I have a theory.

Q Well, you said in the outset from your knowledge and belief neither directly or indirectly did the New Haven road or any of its subsidiaries acquire the property of the Metropolitan Steamship Company of New Jersey or its securities, and I am engaged in actually searching your knowledge on that subject. You say that the Eastern Steamship Company existed, that you don't believe and it is your information that they do not own the wharves and the freight boats? A That has been always my understanding.

Q That thereafter the Eastern Steamship Corporation was organized by a committee, which I assure you is correct, in 1912, and that when it was organized it became the owner of the wharves and the freight boats. I am anxious to find the control, so to speak, where these wharves and freight boats came from and how they got into the Eastern—

*Mr. Crim.* He has told you he doesn't know; that should be sufficient.

A If I were to explain that I should explain it in this way, but I do not explain it as the result of any personal knowledge. I should say that the Eastern Steamship Corporation was organized for the purpose of acquiring the Eastern Steamship Company, the Metropolitan Steamship Company and the Maine Steamship Company. Now, the Maine Steamship Company I know they acquired from the New Haven road or its subsidiaries. From whom they acquired the Eastern Steamship Company—from whom they acquired the Metropolitan Steamship Company you will have to ask somebody else.

Q Which one of those three, the Maine Steamship Company, Metropolitan Steamship Company and the Eastern Steamship Company prior to their merger into the Eastern Steamship Corporation, which one of these three had the wharves and the freight boats? A My understanding, my best recollection is that they were not in the possession of any company that was owned by the New Haven Railroad.

Q That is not quite an answer to my question. A I suppose, if you want my supposition, they were owned by the Metropolitan Steamship Company.

Q That is, the Metropolitan Steamship Company of Maine? A It is whatever company owned the freight boats and wharves; there have been so many Metropolitan Steamship Companies I am liable to be confused.

Q There was the Metropolitan Steamship Company which went in the hands of a receiver, of Maine, which went in the hands of a receiver? A They comprised the two companies or three companies which exist today.

Q That company went in the hands of a receiver of which Mr. Austin and others were receivers? A Yes.

Q That company, the receivers sold that property to the reorganization committee or to their representatives? A I understand so.

Q Now, you understand, do you not, that the history of it is that that property bought by the reorganization committee was turned over to the Metropolitan Steamship Company of New Jersey which was organized? A I think that is right.

Q Now, do you also understand, or is it your understanding of the facts, that there was organized but never perfected the Metropolitan Steamship lines or company? A I never heard of that.

Q Isn't that the name of the company that Mr. Reid organized and invited you into? A I don't know; I always supposed it was Metropolitan Steamship Company; I never paid enough attention to it to charge my memory.

Q At all events that was another company known as the Metropolitan? A Yes.

Q One was Metropolitan of Maine, which went in the hands of a receiver, and Metropolitan of New Jersey, and Metropolitan of Maine of which Mr. Reid was interested, which did not get anywhere. Now, which was the next Metropolitan Steamship Company? A I suppose, I understand, I believe it was the Metropolitan Steamship Company of Maine; that was the one that eventually became the owners of the freight boats and pier in Boston which you spoke of.

Q And that has been known here as Metropolitan Steamship Company of Maine, No. 2? A It may be, I don't remember.

*Charles S. Mellen, cross.*

Q Now, is it your understanding that the Eastern Steamship Corporation organized in 1912 took over the assets of the Metropolitan Steamship Company of Maine, No. 2, the Eastern Steamship Co. and the Maine Steamship Co.? A I don't know whether it took over the assets; it may have been a merger. I never paid any particular attention to it; I know they bought all the property of the Maine Steamship Company because that was a transaction of which I had personal knowledge. I assume that they did the same for the Metropolitan Steamship Company, No. 2, and I assume they did the same for the Eastern Steamship Company, but regarding those two matters I am without definite knowledge.

Q If the freight boats and the wharf passed into the ownership of the Metropolitan Steamship Company of Maine, No. 2, as you have stated, and the Metropolitan Steamship Company of Maine, No. 2, was merged with or transferred its property to the Eastern Steamship Corporation when it was organized in 1912 that would account for the method in which the Eastern Steamship Corporation got it? A Surely.

Q Do you know what the assets of the Maine Steamship Company were? A The Maine?

Q Yes. A Yes, I did at the time.

Q Of what did they consist generally? A I think there were six or seven steamers, an interest in wharf in Portland, some leases on piers in New York.

Q Were you advised as to how this Metropolitan Steamship Company of Maine, No. 2, was going to dispose—how it had gotten hold of the docks and wharf property, I mean freight boats

and wharf property? A I suppose they came to it either from the receivership sale or purchase from the Metropolitan Steamship Company of New Jersey, which bought the property at the reorganization sale. In some way unknown to me those assets were segregated from the Metropolitan Steamship Company of New Jersey and became the property of the Metropolitan Steamship Company of Maine which you describe as No. 2.

Q Did you know, perhaps that question is really a repetition, did you know when the Metropolitan Steamship Company of Maine, No. 2, became the owner of the freight boats and the wharves? A No, but it was sometime after the sale to the Metropolitan Steamship Company of New Jersey; there must have been some negotiation with somebody by which the assets of the Metropolitan Steamship Company of New Jersey were segregated in two parts, one of which became Metropolitan Steamship Company, No. 2.

Q Were you familiar at the time or have you become familiar since with the various details or methods employed, pursued, to accomplish the transfer of the wharf and freight boats from the Metropolitan Steamship Company of New Jersey to the Metropolitan Steamship Company of Maine, No. 2? A I know nothing about it except as I have read in the newspapers and heard inquiries addressed to me regarding all the companies which I supposed had part in it.

Q Did Mr. Robbins advise you how this was done? A No.

Q Did you talk to Mr. Robbins about it? A I don't think I ever have, except to ask him how much and how little he had had to do with it;

he said "this matter the New Haven has nothing to do with, I have other clients."

Q Whether he disclaimed it as a matter of the New Haven road business, or otherwise, did he tell you how it was done? A He did not; no one has told me; I don't know.

Q Did you not know, with your important position as president of the road, that the Maine Steamship Company which you owned every stick of, had at one time become the owner of the docks and wharves and freight boats, the wharf, I mean? A I never heard of it, the Maine Steamship Company becoming the owner.

Q I mean, the wharf in Boston? A It may have been; I don't recall it.

*Mr. Faulks.* Which wharf do you mean?

Q Was there any of the property to your knowledge which passed out of the Metropolitan Steamship Company of New Jersey that became the property of the Maine Steamship Company? A I don't recall it; you have thrown a doubt into me for the moment here; it may have been they purchased that wharf in Boston, but I do not recall it; the books will show.

Q Well, that gives light to the question of your knowledge, of the extent of your knowledge of the operation of the subsidiary companies? A I don't think I was an officer or director of the Maine Steamship Company, I think they had a separate organization; I think Mr. Goodrich was the president of it, but at the same time I calculated to keep close watch of its transactions; I would not think that there could have been a purchase of that pier in Boston without its coming to my knowledge; if it was done I

undoubtedly knew of it at the time and approved it, and the books will show the whole transaction, the books of the Maine Steamship Company which are in the possession of the New Haven road.

Q Suppose the Maine Steamship Company at that time had taken action to buy this or any other property? A What do you mean by "this?"

Q I say the wharf or freight boats? A They didn't have anything to do with the freight boats at all.

Q I am trying to get at your relation to the Maine Steamship Company. Suppose they had taken action to buy anything, any property,—through what channels would the knowledge of that reach you? A Drawn on my pocketbook.

Q They were a corporation intact, were they not? A I know, but they didn't have any securities except those that were in the treasury of the New Haven road; they couldn't enlarge their debt or borrow any money except by coming to the New Haven road for assistance.

Q That was true of the Maine Steamship Company notwithstanding the fact that you had nothing directly to do with its management? A Absolutely true; they could not get a dollar out of the treasury of the New Haven or any of its subordinate companies; the only thing they had to do was to spend their own earnings.

Q Did Mr. Robbins tell you at the time you spoke to him, did he tell you anything about who it was that he represented in connection with the acquisition of this property? A No; when he told me he was interested with outside clients why, of course, I was not so stupid that I did not know parties who were anxious

to get the Yale and Harvard, and I may have thought in my mind he was representing those parties, but I didn't know anything about it.

Q Isn't it a fact that the Maine Steamship Company paid over $400,000 to the Metropolitan Steamship Company of Maine, No. 2, for the Union Wharf of Boston? A If the books show it, it is, and I should say if there is any record of the transaction I should say that was about right. I think there was a mortgage of nearly half a million dollars on the wharf, and the value of the wharf was about $900,000.

Q That would be a case of the subsidiary company of the New Haven, entirely owned by the New Haven, acquiring the wharf to which I have referred? A If the Maine Steamship Company acquired this wharf in Boston it was the acquisition of that wharf by the New Haven road indirectly, because it owned through the New England Navigation Company all the securities of the Maine Steamship Company.

Q Now, then, do you regard the New Haven road as owning a dominant interest in the Eastern Steamship Corporation? A I never have, do not.

Q Twenty thousand of the common and fifteen thousand of the preferred? A I have always carried in my mind that they owned about thirty per cent. interest; I don't know whether that is exactly right.

Q Do you know where the other interests are owned? A Scattered.

Q Where the New Haven had owned thirty or thirty-five per cent. interest in a company, and the other interest was scattered, wouldn't the control of that company be in the New Haven? A I don't know what the New Haven might

have done with its interests. I said control, but it never sought the control, to my knowledge, and the only thing that was ever done during my connection with the property was to respond to Mr. Austin or Mr. Stone's call for proxies, and we never asked representation, never have given the slightest consideration to the operation of the property, and the securities were always for sale up to the time I retired.

Q What was the occasion of your getting your interests in it at all? A We wanted to sell the Maine Steamship Company, and we sold it; we would have sold it for less money if we had a customer who would have paid cash. The Eastern Steamship Corporation was organized to give us securities which we thought were more marketable than the Maine Steamship Corporation's securities were. The Eastern Steamship Corporation had standing financially and we wanted to avail of that to recoup our money that we put in the Maine Steamship Company.

Q Do you still insist that you do not know how the freight boats got into the Eastern Steamship Corporation? A No; I think they crawled in through the window somehow, but I never could find out how, and don't know, don't know who the parties were that owned the Maine Steamship Company, No. 2, or the Metropolitan Steamship Company, No. 2, or who negotiated its transfer to the Eastern Steamship Corporation, or what the basis of the transfer to the Eastern Steamship Corporation was.

Q Who is the president of the Eastern Steamship Corporation? A Calvin Austin, I think.

Q And do you know the directors, who the directors are? A No; Mr. Austin and Mr. Stone; I think Mr. Liggett succeeded his stepfather, Governor Hill.

Q Who is Mr. Stone? A He is a partner of Hayden, Stone & Company, bankers and brokers, in Boston.

Q Is he a director of the New Haven, Mr. Stone? A He was not during my connection with the property.

Q Was he afterward, do you know? A I think he was for a few months.

Q Do you know of any other directors of the Eastern Steamship Corporation? A Mr. Austin, I suppose, was a director, and I think I have seen in the papers that Mr. John E. Liggett is a director; I suppose he succeeded his stepfather, Governor Hill.

Q Governor Hill was a director of the Eastern Steamship Corporation, was he? A I think so.

Q Was Governor Hill connected with the New Haven road? A No.

Q Boston and Maine? A No; Maine Central.

Q Maine Central? A He was a very large stockholder and director in the Maine Central.

Q You said that the New Haven Railroad owned all the stock of the New England Navigation Company? A It does, or did, the 1st of last September.

Q There is a company known as the Merchants Line? A No, that never was a company; that was a line; it was a part of the company; it ran three boats between New York and Boston in competition with the Morse boats; it was owned by the New England Navigation Com-

pany, the boats were owned by the New England Navigation Company.

Q You say the Merchants Line was not a corporation? A I am very sure it was not.

Q But, at all events, whatever it did, it was to run the three boats between Boston and New York? A Yes.

Q And these boats were owned by the New England Navigation Company? A Yes, by the New Haven road itself.

Q Its boats were the Old Colony— A Bunker Hill and Massachusetts.

Q They were run,—what sort of boats were they? A First-class boats.

Q Were they fast? A Yes.

Q Were they designed to compete with the Yale and Harvard? A They were.

Q Did they compete? A They did,—no, they did not, I am wrong; they took the place,—they were first built as freight boats and ran in competition with the Metropolitan Steamship Company boats, No. 2; after the receivership and reorganization they were withdrawn, changed into passenger boats, and afterwards took the line between New York and Boston, and are running there today in place of the Yale and Harvard.

Q When were those boats built? A Well, I can't tell you; the records of the New England Navigation Company will show that.

Q They were built for the New England Navigation Company? A They were.

Q They were built first as what kind of boats? A Freight boats, with a view to their being turned ultimately into passenger boats.

Q Do you know what the cost of those boats was? A I should say in round numbers $900,000 apiece.

Q Now, when were they converted into passenger boats? A Why, if you will tell me the time they were transferred, it was about that time they were transferred into passenger steamships to take the place of the Yale and Harvard after the Yale and Harvard were withdrawn.

Q And went to the Pacific coast? A Yes.

Q So to take the place of the Yale and Harvard these three boats which had been freight boats and were designed to be transferred or converted were converted into passenger boats and took the place of the Yale and Harvard? A That is a fact.

Q And these three boats belonged to the New England Navigation Company? A They belonged at the time of the transfer, I am quite sure they belonged to the Maine Steamship Company, but the Maine Steamship Company belonged to the New England Navigation Company.

*Mr. Faulks.* The record shows only two of the three were transferred into passenger boats.

A They were all built so they could be, I think all three were, I think one of them is spare boat now; I remember one of them was a turbine steamer.

Q You first answered that they were built to compete with the— A Freight boats.

Q I understood you, you corrected it a little later,—I am drawing your attention to it not for the purpose of contradiction, but to refresh your

recollection—I understood you to say at first that they were built to compete with the Yale and Harvard; they did not compete, however, until they were converted; isn't it a fact that those were built with the intention of having them compete with the Yale and Harvard ultimately? A They were built first as freight boats with a view to their cheap conversion into passenger boats to compete with the Metropolitan freight boats between New York and Boston, but always, as I may express it, in the back of our heads we had the thought that we should use them to compete with the Yale and Harvard; therefore they were built with a view to a quick and ultimate conversion into passenger boats.

Q In other words, if the Yale and Harvard were still running between Boston and New York you could convert them into passenger boats and compete with them? A I think that is what I had in mind.

Q But as they went around to the Pacific coast— A They were still converted just the same.

Q They were converted then to take the place of the Yale and Harvard? A To fill that line.

Q Where did they fetch up, in whose ownership finally? A They were a part of the Maine Steamship Company which were brought to the Eastern Steamship Corporation

Q So, by going through these various *cul de sacs,* by forming these various *cul de sacs,* we fetch up with the three boats which were converted in the ownership of the Eastern Steamship Corporation, and the freight boats and wharf of the Metropolitan Steamship Company of New Jersey in the ownership of the same company? A Eastern Steamship Corporation.

Q And the docks? A I wouldn't say positively, but I think that is where they all landed.

Q So what is left of the competing line of the Metropolitan Steamship Company of New Jersey, with the boats, docks, wharves, the converted boats of the New England Navigation Company, of which the New Haven was really the owner, all wind up at the end of a long series of negotiations in the hands of the Eastern Steamship Corporation? A Yes, and it came near landing all the rest of our steamships in the same place.

Q You did not have any use for the Yale and Harvard? A No, we had no use for the Yale and Harvard; I have no use for the outside line anyhow.

Q You don't believe in that? A No, I do not.

Q Still the policy of the company prevailed? A The policy of the company was to keep the boats from competitors, so to get rid of them.

RECESS.

Q Mr. Mellen, I asked you before luncheon regarding the three boats that you had built, when they were built, the Old Colony, the Bunker Hill and the Massachusetts, and I think you said they were built at an expense of about $900,000 apiece? A Apiece, I think.

Q Now, those boats were primarily when they were built freight boats, were they not? A Yes, but they were built with the idea to their economical transformation into passenger boats.

Q Well, in operating them as freight boats they operated at much greater speed than ordinary freight boats did? A They could; we did not try to operate them at high rate of speed because that was uneconomical.

Q And using them as freight boats were they found to be economical? A They were not profitable; they lost for us a good deal of money.

Q As freight boats can you give a reasonable estimate of what they lost? A No.

Q I mean per day, per month, per year? A No, I would not be able to tell you that, I could not, but I know they lost considerable money; they were a losing venture, the line, the Boston Merchants Line was.

Q Losing venture from beginning to end. Were they the dominant feature of it? A I think they carried full as much or more than the Metropolitan Line in business.

Q Well, you could not have continued the use of these boats as freight boats without a certain prospect of loss? A I think it was a case of endurance, survival of the fittest, if the boats had continued running whether or no the New Haven Railroad could stand the loss; unless the Metropolitan could one line or the other was bound to be withdrawn.

Q Well, that, of course, would come to the further question of which was the more resourceful and which was able to stand that loss? A That was the question, whether it was the New Haven road or the Metropolitan Steamship.

Q What I mean is, there would be no time when the operations of the boats, according to your understanding, which they would not be operated if they operated in competition with other boats, or the Metropolitan, that there would not be a loss? A I do not think the boats were well constituted for freight service; they were too expensive; they were—boats for one-third of that cost would have done the freight service just as well.

Q Therefore, it would have been as an economical proposition, assuming that there would be no legal objection, it would have been highly desirable that there should not be a competing line with those boats? A Well, it was highly desirable to the Metropolitan certainly, and, of course, the New Haven road lost money, they both lost money as the result of two lines; there was not business enough for two lines.

Q If the Metropolitan, for instance, was out of it, why, the New Haven— A Could possibly have made money, but more money with a less expensive boat.

Q Now, if the Metropolitan were out of the way, with their steam craft I mean, their passenger boats, and these were converted from freight boats into passenger boats, that would be the most desirable situation for the New Haven, wouldn't it, with those boats? A Repeat that, please.

Q If the Yale and the Harvard, for instance, were out of the way and these boats were converted into passenger boats that would be about as desirable a situation as you could get with these three boats, wouldn't it? A Well, the most desirable situation that could be had was that there should be no line of passenger boats.

Q That I understand to be your view of outside business? A Yes.

Q But assuming that there was to be a line, or were lines it would have been vastly better for the New Haven road if the Yale and Harvard were out of the way and these were converted into passenger boats and carried passengers, instead of being freight boats as they were? A I am inclined to think that might be a fair statement.

Q Well, as a matter of fact when the Yale and the Harvard did go around to the Pacific coast

under the lease, and these boats were converted into passenger boats there was no competition, no competition then, was there, in the passenger line? A After the Yale and Harvard were withdrawn?

Q Yes. A No.

Q And when they were converted into passenger boats and were used for the transportation of passengers did they make a better yield to the New Haven road? A They were never profitable as passenger boats.

Q Well, after they were converted into passenger boats and run as such did not they produce better results for the New Haven road? A I don't think there was any material advantage as a result of their being converted into passenger boats.

Q And the Harvard and Yale had gone to the Pacific? A And the Harvard and Yale had gone to the Pacific.

Q Where did the traffic go? A There never was any to warrant the running of either line.

Q You mean to say there was not—that the traffic which the Harvard and Yale had hitherto had, it went some place, didn't it? A Yes, but there was never enough to support the Harvard and Yale or to support the line which took its place.

Q You mean, the situation was no better, do you mean that? A No better.

Q After they were converted into passenger boats and the Harvard and Yale had been taken off— A I don't think there was any material difference in the net results of the operation of those steamers, whether they were confined to freight business or confined to passenger business, or passenger and freight; I don't think

there was sufficient business to warrant either the Harvard or Yale or these boats after they had been converted into passenger boats.

Q Was the loss to the New Haven reduced? A Regarding that I can not tell you for I don't carry the figures closely enough in mind, but I don't think either line ever paid, the freight line or the passenger.

Q That is saying it one way and I am asking it another. You said there was a loss when they operated as freight boats? A There was.

Q Now, I ask you after the Harvard and Yale had been taken off and sent around to the Pacific coast and these converted into passenger boats was the loss less to the New Haven road than it had been before? A I don't carry the figures in mind; I know there was loss, but I don't think there was a material difference.

Q When the Yale and Harvard had been sent around to the Pacific coast and the freight boats had gone into the Metropolitan of Maine, No. 2, and thence into the Maine Company, what competing lines were there, water lines, left from Boston to New York? A I think there were no lines, water lines, between Boston and New York except those in control of the Eastern Steamship Corporation and of the New Haven road, too; the two comprised all the lines between Boston and New York.

Q What the Eastern Steamship Corporation had and what the New Haven road had? A It was under monoply of water transportation between Boston and New York.

Q And therefore the elimination of the Yale and Harvard and the freight boats which belonged to the old Metropolitan Company completed that water monoply in the hands of the

Eastern Steamship Corporation and New Haven road? A Did not change it. When the Harvard and Yale were running they were running in control of the Eastern Steamship Corporation; when the Yale and Harvard were withdrawn and sent to the Pacific coast the line that was converted from freight boats into passenger boats was run in the interests of the Eastern Steamship Corporation; therefore, the result so far as the public was concerned was unchanged.

Q So far as the public, that may be so, but I am talking about now— A So far as ownership it was practically unchanged.

Q How did these converted steamers, the Old Colony and Massachusetts and Bunker Hill get into the hands of the Eastern Steamship Corporation if it was not in control of the New Haven road? A They were bought; the New Haven had no interest at all in the Eastern Steamship Company or Corporation at the time the Maine Steamship Company was sold to it. The result of the sale made the New Haven an owner of securities in the Eastern Steamship Corporation; that is the way the interest of the Eastern Steamship Corporation was acquired.

Q You mean, they took back in securities what represented the transfer of these boats? A Yes, and the other boats of the Maine Steamship Company.

Q The Maine Steamship Company being entirely owned by the New Haven Railroad when it merged and transferred to the Eastern Steamship Corporation their interest followed their property and was represented by the securities of the Eastern Steamship Corporation? A Which were read this morning.

Q So the form of their ownership in this is changed? A In one case they had an absolute ownership and direction, and in the other case they had the ownership of the minority security and never had any direction at all.

Q Have you inquired what the percentage, actual percentage of the ownership of the New Haven and Eastern Steamship Corporation is? A Why, I have known and I have carried it in my mind, a little over thirty per cent. of the total.

Q Wasn't it forty-one per cent.? A I won't say it was not; the figures will show very quickly; it is a matter of record.

Q Are these three boats running now, do you know? A I suppose they are, just about going on for the season.

Q Do you know anything about the Pacific Navigation Company? A Never heard of it until I read of these proceedings.

Q Did you know about the lease that was made to the Pacific Navigation Company? A No.

Q Of the Yale and Harvard? A Never knew there was a lease until I read of it.

Q You knew the Yale and Harvard had gone around to the Pacific coast? A Yes, matter of public knowledge.

Q Are you familiar with the company known as the New England Investment and Security Company? A Oh, yes, quite well.

Q What kind of a company is that? A That is a voluntary association of the State of Connecticut, and it owns and controls trolleys in Massachusetts that were formerly owned and controlled directly by the Consolidated Railway and New York, New Haven and Hartford Rail-

road. It has no ownership except trolley securities.

Q Well, it has outstanding a large issue of gold notes? A Yes.

Q Has it not? A Yes.

Q Who controls the New England Investment and Security Company? A The New England Investment Security Company is a company that has seven trustees.

*Mr. Faulks.* I want to object to that as immaterial and irrelevant.

A (Continuing.) Four of them elected by the common stock and three by the preferred stock.

Q Who owns the stock of that company?

*Mr. Faulks.* The same objection.

A The preferred stock is very widely scattered; the common stock is all bunched in the control of one party, Sanderson and Porter, in New York.

Q Who are they? What are they, a firm of business men, or what? A They are a firm of contractors and owners and promoters and operators of trolley properties in different sections of the country.

Q What drew my attention to it, I notice on this report to which you referred this morning that three million of the New England Investment & Security Company gold notes are pledged as collateral for loan one million nine hundred thousand dollars made by the New England Navigation Company? A Very likely.

Q What relation have those companies to each other? A The New England Navigation Company owns practically all of the gold notes

of the New England Investment Security Company that are outstanding.

Q And how long has that been in effect, Mr. Mellen? A They owned all but $10,400,000 par value of those notes on the day I retired from the presidency. I am informed and believe and have seen it stated in the press that since my retirement they have exchanged their $10,400,000 for par of an equivalent number of Billard Company notes which they formerly held; so that now the situation is, unless there has been some redemption I am not aware of, the situation should be, it is that the Billard Company notes are all cancelled and retired and the $13,709,000 of the New England Investment Security Company gold notes are now in the treasury of the New England Navigation Company.

Q Did the New England Navigation Company own any of the notes of the New England Investment & Security Company in 1910? A I don't think so; I think they have acquired them all since the 1st of January, 1912.

Q Did the Billard Company own any of the New England notes? A They owned them all, every outstanding note.

Q In 1910? A Yes.

Q This book I show you is the report of the forty-second year, general statement of the affairs of the New York, New Haven & Hartford Railroad Company for the year ending June 30, 1913, that is correct, is it? A Yes.

*Mr. Littleton.* I ask to have that marked for identification.

Marked 1 for identification, J. R. S.

Q My attention has been called under an item, "Contingent liabilities" to this statement

in this report, "The New York, New Haven & Hartford Railroad Company guarantees four per cent. dividend on the preferred stock of the New England Investment & Security Company, $4,000,000, and payments of principal at one hundred and five per cent. on liquidation; also guarantees payment of principal, $5,000,000 and interest of the New England Investment Security Company, fifteen-year funding gold notes, dated April 1, 1909; also guarantees the payment of an additional $11,250,000 and interest of New England Investment & Security Company fifteen-year funding gold notes, dated April 1, 1909, when requested to do so by John L. Billard, as per contract." That statement represents a fact, does it?

*Mr. Faulks.* We object to that as immaterial and irrelevant.

A That represents the situation as stated therein. I think, however, there should be a further statement made to place the matter correctly before anyone, and that is this: While there was in the first instance an authorized issue of $16,250,000 of those gold notes, they had been redeemed down to an outstanding amount of $13,709,000. They were, all of them, when requested by John L. Billard, who afterwards incorporated his interest under the name of the Billard Company, they were under contract that upon his request, or his successor and assigns, that they should be guaranteed principal and interest by the New York, New Haven & Hartford Railroad. I suppose at the time of that report there had been a guarantee placed on those notes to the extent of $5,000,000, and the balance would have had to be guaranteed whenever presented with the proper request so to do.

Q Do you know why the New Haven road should have guaranteed those notes?

*Mr. Faulks.* We object to that as immaterial and irrelevant.

A Because in the first instance they owned them; in the second instance, they owned at one time all the common stock and they sold all the preferred stock. In order to make a market for it they guaranteed it.

Q (*By Mr. Ward.*) Mr. Mellen, Mr. Campbell, the vice-president of the New Haven road, to whom you referred this morning was at one time a resident of the West, was he not? A Portland, Oregon, and afterwards St. Paul.

Q I don't think I asked, do you know from the course which was followed in the transfer of these boats, Bunker Hill, Massachusetts and Old Colony, from the Merchants Line the various steps of their transfer to where they are now? A They were built by the New England Navigation Company. They were sold by the New England Navigation Company to the Maine Steamship Company. All the property of the Maine Steamship Company was sold to the Eastern Steamship Corporation.

Q By any chance have you overlooked the fact, did they at any time go into the Hartford & New York Transportation Company? A I don't think so, and I think if there is an impression that that is easily explained, the officers of the Maine Steamship and Hartford & New York Transportation Company were substantially the same, the same officers, vice-president, and everything.

Q Did the New Haven own the Hartford & New York Transportation Company? A Every dollar.

Q And, briefly, what was that company? A The Hartford & New York Transportation Company was a company, I think, organized under the laws of the State of Connecticut and run steamboats between Hartford & New York during the season of navigation, and also does a towing business of coal between points of New York and Hartford and points on the Connecticut River. It also runs what remains of the old Joy Steamship Company line to Providence and to Bridgeport.

Q Do you know who represented the New Haven road in the negotiations which resulted in the transfer of the property from the Maine Steamship Company to the Eastern Steamship Corporation? A I think I delegated that to Mr. Robbins.

*Re-direct examination* by Mr. Faulks.

Q Mr. Mellen, you said this morning that you were the president of the active subsidiary companies of the New Haven system. Who was the secretary and who was the treasurer of those companies? A Practically in every instance Mr. May was the treasurer and Mr. Parker was the secretary up to the time of his death, succeeded by Mr. Arthur E. Clark, who is now secretary.

Q Did you have an intimate knowledge of the financial affairs of all of those companies? A I kept pretty well posted.

Q Did you keep as well posted with regard to the others as you testified you did with regard to the Maine Steamship Company? A I think so.

Q In your cross examination in connection with the questions put to you by Mr. Littleton

with regard to your interviews with Mr. McGovern you were asked about your being introduced to Mr. McGovern or his being introduced to you, and said in reply, "This was in connection with the securing of the Yale and Harvard." In connection with the securing of the Yale and Harvard by whom did you mean? A By Mr. McGovern, for his associates or clients, whoever they might be.

Q Do you remember whether Mr. Robbins was a director in the New York and New Haven company at the time that you were having your negotiations with Mr. McGovern? A Mr. Robbins was director for a very short time, but just exactly what time it was I could not recall; the records will show.

Q I understand you to say he was never vice-president of the company? A Never vice-president of the company.

*Mr. Faulks.* I want to ask Mr. Mellen one or two more questions after certain records have been produced.

ARTHUR E. CLARK, being duly sworn according to law on his oath says:

*Direct examination* by Mr. Faulks.

Q Mr. Clark, are you the secretary of the New York, New Haven & Hartford Railroad Company? A Yes, sir.

Q How long have you held that position? A About three years and a half.

Q And whom did you succeed? A John G. Parker.

Q Is he living? A He is dead.

Q And you succeeded him at the time of his death? A Yes.

*Arthur E. Clark, direct.*

Q Are you also secretary of the subsidiary companies of the New Haven system? A Most of them, yes.

Q Are you the secretary of the New England Navigation Company? A Yes.

Q And of the Maine Steamship Company? A Yes.

Q And of the New York & Hartford Transportation Company? A Hartford & New York Transportation Company.

Q You have been subpoenaed, have you not, to produce certain records of the New York, New Haven & Hartford Railroad Company and its subsidiary companies at this hearing today? A Yes.

Q Have you your subpoena with you? A I have.

Q Will you produce it, please? A (Witness handed Mr. Faulks paper.)

Q I see from this subpoena that you have handed me that you have been subpoenaed to produce "all books, records, documents and other papers of the New York, New Haven & Hartford Railroad Company, or any of its subsidiaries, in your possession or under your control, containing entries of or as to any present or former holdings, or ownership, or sales or purchases, or transfers of shares of stock or other securities issued by Metropolitan Steamship Company, a corporation of the State of New Jersey; Metropolitan Steamship Company, now or formerly a corporation of the State of Maine; Pacific Navigation Company, a corporation of the State of New Jersey; New England Securities Company, a corporation of the State of New Jersey; Eastern Securities Company, now or formerly a corporation of the State of Maine,

and Eastern Steamship Corporation, a corporation of the State of Maine." Also, "The minute books of the board of directors and of the executive committee of the board of directors and of the stockholders of the said New York, New Haven & Hartford Railroad Company, covering the period from January 1, 1909, to date, in your possession or under your control, containing any record or entries of or as to the present or former ownership or holdings, or sales, or purchases, or transfers by or to said New York, New Haven & Hartford Railroad Company, or any of its subsidiaries, of shares of stock or other securities issued by any or all of the above named corporation other than said railroad company."

*Mr. Littleton.* May I interrupt you to inquire why you are reading that on the record?

*Mr. Faulks.* Because I want to have it appear that we have subpoenaed these books, and the extent to which the witness has responded to the subpoena.

*Mr. Littleton.* The witness is under your control, isn't he?

*Mr. Faulks.* No; he is the secretary of the New Haven road. He has no connection with the Metropolitan Steamship Company.

Q Also, "Any and all books, records, documents, or other papers of said New York, New Haven & Hartford Railroad Company or any of its subsidiaries, in your possession or under your control, containing entries of or as to any transactions whatsoever between the said railroad company or any of its subsidiaries, and the above named corporations other than the rail-

road company, or any of them. Any and all letters, telegrams, or other papers received by you or any of you, or by the said New York, New Haven & Hartford Railroad Company, or any of its subsidiaries in any way relating to any of the above named corporations other than the said railroad company, or in reference to the shares of stock or other securities issued by any of the above named corporations, or to any of the property at any time owned by any of the above corporations or to the business of any of the above named corporations." Also, "Any and all books, records, documents or other papers of the said New York, New Haven & Hartford Railroad Company, or any of its subsidiaries, in your possession or under your control, containing entries of or as to a loan of $1,000,000 made by the Bank of Manhattan Company of the City of New York, in the State of New York, to the said railroad company on or about February 14, 1910, or as to the use made of the proceeds of such loan." Have you made a search among the books and records of the New York, New Haven & Hartford Company and its subsidiary companies for these things called for by this subpoena? A I have.

Q And have you produced all of them that you can? A I have. I will.

Q (*By Mr. English.*) You have or you will? A I will.

Q Are you the custodian of these books and records ? A I am.

Q Were you connected with the New Haven system prior to the time that you became secretary of the companies you mentioned? A I was.

Q In what capacity? A Prior to my election as secretary I was assistant secretary of the company from December, 1909; prior to that chief clerk of the secretary's department from 1904.

Q How long have you been familiar with the records of the company? A Twenty years or more.

Q Now, will you produce those books now, please, and records. Now, will you tell us what these books are that you have just produced and placed on the table? A I have here the record book of the Maine Steamship Company from 1873 to and including May, 1912.

Q You have spoken of this one as the record book of the Maine Steamship Company covering a certain period? A Yes.

Q The subpoena calls, Mr. Clark, for the records of the Maine Steamship Company with reference to particular matters mentioned therein; that is, in the subpoena. Now, have you the entries relating to those matters? Do they appear in this book? A Yes, sir.

Q Will you turn to such entry or entries and read it into the record at this time?

*Mr. Littleton.* That is objected to unless the witness qualifies as to who made the entry and when it was made.

*Mr. Faulks.* The witness has said it is the record book of the Maine Steamship Company, and that it is in his custody.

*Mr. Littleton.* That doesn't prove it.

*Mr. Faulks.* And as secretary of the company he has the custody of the records. I think that proves it.

*Mr. Littleton.* The record book is objected to upon the ground that it does not appear to be other than hearsay testimony repeated by the witness Clark, as he does not testify to having made the entries in the book and to any knowledge of the handwriting of the person who made them.

Q Now, you may proceed and read it, Mr. Clark, if you will; read them chronologically if there are more than one. A This is, "Special stockholders' meeting of the Maine Steamship Company, held December 28, 1911. Voted that the sale by this company of the following steamers: North Land, North Star, Bunker Hill, Old Colony, Massachusetts, with the unexpired insurance upon the same, and of all this company's interest in any wharf property, subject to all mortgages now thereon, but with the assignment of this company's interest in the sinking fund of the said mortgages, is hereby authorized and approved upon the following terms. This company is to receive in payment for the property so sold as aforesaid fifteen thousand shares of the preferred capital stock of the Eastern Steamship Corporation, organized under the laws of the State of Maine, and located at Elliott, in said state, of the par value of $100 each, entitled to dividends of six dollars per share in each calendar year, cumulative after December 31, 1913, and $2,500,000 par value of the first mortgage and refunding five per cent. bonds of said Eastern Steamship Corporation, to be secured by a mortgage covering all the property to be sold as aforesaid; and in addition covering at least the following property: The steamers Catherine, Juliette, Monhegan, Minneola, Bay State, Nahanada, Wiwurna, City of

Augusta, Belfast, R. B. Fuller, Camden, J. T. Morse, City of Bangor, City of Rockland, Calvin Austin, Booth Bay, Governor Cobb, Governor Dingley, Southport, Westport, James S. Whitney, H. M. Whitney, Herman Winter, H. F. Dimock, James Anderson, W. S. McGowan, N. Haven, J, W. Walker, G. H. Prior; the vessel used as a car float and called The Eastern; the vessel used as a car float and called The Western; and also covering all the real estate now owned by the Eastern Steamship Company."

Q You have produced and read the stockholders' minutes of the meeting of the Maine Steamship Company held on what date? A December 28, 1911.

Q And by whom were those minutes kept and made? A H. A. Clay, clerk.

*Mr. Faulks.* I now offer in evidence the portion of the minutes which the witness has read into the record.

Q Is there anything else in that book referring to this matter? A No, sir.

*Mr. Littleton.* The testimony is taken subject to the same objection made to the reading of it.

Marked Exhibit D. 2.

Q Now, you have produced and read, I understand you to say, everything from the records in that book with reference to any matters covered by your subpoena? A As far as I found, yes, sir.

Q Now, what other minutes or records have you in the book that is now before you relating to matters in the subpoena? A As far as I found, yes, sir.

Q Now, what other minutes or records have you in the book that is now before you relating to matters in the subpoena? A I have here a record of the board of directors' meeting of May 5, 1911, of the Maine Steamship Company.

Q What is the book containing the minutes of the meeting to which you have just referred? A This is a book of the board of directors of the Maine Steamship Company.

Q And who kept the minutes of that meeting? A Mr. Parker and myself, this book.

Q Who kept the minutes of this particular meeting to which you have referred, by whom are they signed? A Clerk pro tem, C. H. Hempstead.

Q Is Mr. Hempstead one of your assistants? A Yes, sir.

Q I wish you would read the minutes of that meeting that you have produced insofar as they relate to any matters mentioned in or covered by the subpoena.

*Mr. Littleton.* That is objected to upon the grounds that they are not properly proven, that they are simply hearsay testimony recited by this witness on the record, and it appears they were kept by some one else; they are kept in typewriting, apparently; no handwriting is identified.

A "Board of directors" meeting of May 5, 1911. On motions, duly seconded, the following votes were unanimously passed: Voted that this company purchase for $400,000 the equity in Union Wharf, Boston, Massachusetts, now owned by the Metropolitan Steamship Company, subject to a mortgage of $500,000, and the executive officers of this company are hereby authorized to take such action as shall be necessary to

carry into effect the intent of this vote. Voted, that the executive officers of this company are authorized to acquire the rights of the lessee in and to and under a certain indenture of lease dated June 1, 1889, between the Central Wharf and Wet Dock Corporation of Massachusetts, and Metropolitan Steamship Company, a corporation organized under the laws of the Commonwealth of Massachusetts, of India Wharf in Boston, Massachusetts, at the rental therein stated, which lease ran for the term of twenty years from said date, and on or about the 26th day of April, 1905, was extended for the term of ten years from the expiration thereof at an expense to this company not exceeding $75,000."

Q What was the date of that meeting the minutes of which you have just been reading? A May 5, 1911.

Q (*By Mr. English.*) Give us the page you read from, please. A It is meeting of May 5, 1911, first page of the record.

*Mr. Faulks.* I offer in evidence the minutes of the Maine Steamship Company which have just been read into the record by the witness.

*Mr. Littleton.* The same objection as made before.

*Mr. Faulks.* I am quite willing to have it understood, Mr. Littleton, that your objection shall stand to all of these records.

Marked Exhibit D. 3, J. R. S.

Q Now, have you produced any other minutes in that same book? A Meeting of May 29, 1911, board meeting.

Q Meeting of board of directors of the Maine Steamship Company? A Yes.

Q By whom are those minutes signed? A By myself.

Q By yourself? A Yes, sir.

Q And the date was May 29, 1911? A Yes, sir.

Q Now, please read into the record anything in the minutes of that meeting relating to the matters mentioned in the subpoena, or any of them. A "The president presented and read to the meeting a proposed indenture dated May 22, A.D., 1911, between The Central Wharf and Wet Dock Corporation, a corporation organized under the laws of Massachusetts, and this company, and stated to the meeting that the lease of India Wharf in Boston had been assigned by the Metropolitan Steamship Company, a corporation organized under the laws of New Jersey, to this company, but that before said assignment could become effective it was necessary to obtain the assent of the lessor, the Central Wharf and Wet Dock Corporation; and further stated that the proposed indenture, contained such assent, and that the terms thereof were satisfactory to this company; and upon motion, duly made and seconded, the following resolution was unanimously adopted: 'Resolved, that the form of the proposed indenture be and it is hereby approved, and that the president of this company be and hereby is authorized to execute the same in the name and behalf of this company.'"

*Mr. Faulks.* I will offer in evidence the minutes just read by the witness into the record.

Marked Exhibit D. 4.

Q Now, have you produced any other minutes from that book under the subpoena? A Yes, sir.

Q The minutes of what meeting do you produce now? A Meeting of the board of directors February 16, 1912.

Q Will you read that into the record? First, let me ask you by whom are those minutes signed? A By myself.

Q Were they kept by you? A Yes, sir.

Q Now, if you will read those, please. A "Voted, that the executive officers of this company are authorized to sell, at such price as they shall deem for the best interests of this company, any or all of the bonds of the Eastern Steamship Corporation owned by this company."

Q Is that all in the minutes of that meeting that is called for by the subpoena? A Yes, sir.

*Mr. Faulks.* I will offer that portion of the minutes read by the witness in evidence.

Marked Exhibit D. 5.

Q Have you produced the minutes of any other meeting of the Maine Steamship Company? A Yes.

Q Of what date? A A board meeting July 19, 1912.

Q Board of directors' meeting? A Board of directors.

Q And by whom are those minutes signed? A By myself.

Q And were they kept by you? A Yes.

Q I will ask you now to read into the record. A "On motion, duly seconded, the following resolution was unanimously adopted: 'Resolved, that C. C. Goodrich, president of this company, be and he hereby is authorized to exe-

cute in the name and on behalf of this company an assignment and transfer to the New England Navigation Company of twenty thousand shares of the common stock and fifteen thousand shares of the preferred stock of the Eastern Steamship Corporation.' ''

Q What period of the minutes of the directors and stockholders of the Maine Steamship Company are covered by that book? A This is the board record entirely, board of directors' record from April 8, 1910, to July 19, 1912.

Q Have you given us all the minutes contained in that book with reference to any of the matters called for by the subpoena? A Yes.

*Mr. Faulks.* I will offer the minutes of the last meeting that the witness has read into the record, that portion of it.

Marked Exhibit D. 6.

Q Now, are there any other minute books of either the stockholders or directors of the Maine company relating to matters called for by the subpoena? A No, sir, not that I know of.

Q Well, if there were any such books they would be in your possession would they not? A They would.

Q And under your custody and control? A Yes, sir.

Q Now, have you the minutes of any meeting of any of the other companies named in the subpoena with reference to matters called for therein? A Yes, sir. I have here the board record of the Hartford & New York Transportation Company.

Q To what meeting do you refer? To the minutes of what meeting do you refer in answer to my last question? A Board of directors'

meeting of the Hartford & New York Transportation Company held February 16, 1912.

Q By whom are the minutes of that meeting signed? A By myself.

Q And by whom were they kept? A By myself.

Q Now, will you read into the record anything from the minutes of that meeting which relates to the matter called for by the subpoena? A "Voted, that for the purpose of enabling the Maine Steamship Company, whose capital stock is held by this company, to obtain cash for the liquidation of its indebtedness to this company, and for other purposes, the executive officers are authorized to purchase of said company first mortgage bonds of the Eastern Steamship Corporation at ninety-seven and one-half and interest."

Q Is that all there is in those minutes relating to the matters in question? A Yes.

*Mr. Faulks.* I will offer that in evidence.

Q Is this a current book? A Yes.

Q From what page have you read in that book? A Page twelve of the record.

*Mr. English.* We ask to have the book marked in evidence, treated as evidence.

*Mr. Robbins.* I object to that book going out of the possession of the company.

Q How is that book marked on the back? I want to identify it. Will you read whatever printing appears on the back of it? A "Records. 1. The Hartford & New York Transportation Company."

Q And what period does that book cover? A December, 1911, to date.

Q Does it cover both stockholders' and board of directors' minutes? A Yes, sir.

*Mr. Littleton.* What do I understand, Mr. Faulks, is your position regarding the marking of that single page that is read into evidence?

*Mr. Faulks.* I haven't any position in the matter at all. The New Haven persons connected with the New Haven Company who have produced the book say they do not want these current books marked up, and I don't think that it ought to be insisted that they should be marked, because they can be identified in any reasonable way, and because we have followed that practice in other cases and accommodated your side over and over again in connection with matters of this kind.

*Mr. Littleton.* I don't think so much of the objection about the New Haven road not wanting the book marked; of course, they have got rights which they may insist on, but marking of the book is no different from marking the other book. I have no desire to put anybody to any inconvenience about it.

*Mr. Faulks.* There don't seem to be any possible necessity for it; it is sufficiently identified by the name on the back and the page.

*Mr. Littleton.* What is the difference of marking this and the other?

*Mr. Robbins.* The other is a dead corporation; we don't care anything about it.

A I asked that it not be marked.

*Mr. Littleton.* Everything that is offered in evidence has a right to be marked in evidence in some form.

*Mr. Robbins.* Nobody has any legal right to mark our books.

*Mr. Littleton.* If it is offered in evidence it should be marked.

*Mr. Robbins.* We produce it, but we decline to permit it to be marked.

*Mr. Littleton.* If you take that position then we will just lock horns on that. I insist that the book be marked in evidence.

*Mr. Robbins.* Mr. Clark, I advise you not to permit it to be marked.

*Mr. Littleton.* I move the answer and the record be stricken from the record. I would like it to appear that Mr. Robbins objects to the marking of the book in evidence, general counsel of the New Haven road.

Exhibit D. 7, not marked.

Q Is there any other record of the Hartford & New York Transportation Company containing any entries with relation to the matters called for by the subpoena? A Yes.

Q You have them here? A Yes, sir.

Q What is the record to which you refer? A Board of directors' meeting, April 19, 1912.

Q By whom is that signed? A By myself.

Q By whom were the minutes of that meeting kept? A Myself.

Q Now, will you read from the minutes of that meeting any matter that is called for by the subpoena? A "Voted, that the executive officers of this company are authorized to sell to the New England Navigation Company stock and bonds—"

*Arthur E. Clark, direct.*

*Mr. Littleton.* I object to reading this on the record unless it is to be marked in evidence.

Q Proceed.

A "—of the Eastern Steamship Corporation which it now holds and is to acquire upon the liquidation of the affairs of the Maine Steamship Company, and also bonds of the Maine Steamship Company as follows: Fifteen thousand shares of preferred stock of the Eastern Steamship Corporation at ninety-seven and a half, twenty thousand shares of the common stock of the Eastern Steamship Corporation at forty-two, two million, five hundred thousand bonds of the Eastern Steamship Corporation at ninety-seven and a half and interest, sixteen first mortgage, six per cent., gold bonds of the Maine Steamship Company of Maine for $17,300 and interest. The debentures of the New England Steamship Company may be accepted at par and interest in whole or part payment of said purchase."

*Mr. Faulks.* I offer the entry as there read by the witness.

*Mr. Littleton..* It is objected to unless the entry is marked as an exhibit in regular form.

Exhibit D. 8, not marked.

*Mr. English.* We desire to have it appear on the record that although the Master gives the exhibit a number, namely, D. 8, counsel refuses to permit the exhibit to be marked.

*Mr. Faulks.* You are mistaken in saying I refuse to permit it to be marked. I take the position that I have no voice in the matter at all. I have called for the production

of these records by subpoena. They have been produced, and the officer of the New Haven Company who produces them declines to allow them to be physically marked. In order, however, that they may be easily and properly identified, I will now ask you, Mr. Clark, to give us the printing on the cover of the book from which you have read, also the page from which you have just read and also the period covered by the book from which you have read.

A The volume is marked, "Records. 1. The Hartford & New York Transportation Company." The last record read appears on page thirteen of that book; the volume covers the period from December, 1911, to date.

*Mr. Faulks.* Now, Mr. Salmon, I will ask you to mark on your minutes as D. 7 the portion of the minutes read by the witness just before he read the portion of them constituting D. 8.

*Mr. English.* And we call attention to the record to the fact that while the minutes show an exhibit number, namely, D. 7, the book itself is not marked, and we ask counsel for the defendant who offers it in evidence to have it marked.

*Mr. Faulks.* I have explained before why I am not doing that, because the persons producing the books object to having them marked, and because in view of the way they have been clearly identified there can be no possible necessity for their being marked.

*Mr. English.* Then we ask the Master to mark them in evidence on his own authority, and in view of the failure of the Master to

mark them, as well as the counsel for the defendant producing them to have them marked, we give notice that we shall object to their reading and move to strike them out.

Q Mr. Clark, have you produced all of the minutes and records of the New York & Hartford Transportation Company that are called for by the subpoena? A As far as I could find, yes.

Q Well, you have made a careful search for them, have you? A I have made a careful search.

Q (*By Mr. English.*) What page did you read from last, the imaginary D. 8? A Page thirteen, wasn't it? Page thirteen.

Q These entries which you have read relate entirely to the Maine Steamship Company and the Eastern Steamship Corporation, do they not? A Yes.

Q Now, have you in response to the subpoena produced any other records? A I have. The New England Navigation Company.

Q Have you a minute of the meeting of either the board of directors or of the stockholders of that company relating to such matters? A Yes.

Q What is the date of that meeting, and is it a meeting of the stockholders or of the board of directors? A Meeting of the board of directors of the New England Navigation Company held April 18, 1912.

Q By whom are those minutes signed? A By me.

Q And by whom were they kept? A By me.

Q Please read into the record the portion of those minutes which are called for by the subpoena. A "Voted, that the executive officers of this company are authorized to purchase from

the Hartford & New York Transportation Company stock and bonds of the Eastern Steamship Corporation, and bonds of the Maine Steamship Company, as follows: Fifteen thousand shares of preferred stock of the Eastern Steamship Corporation at ninety-seven and a half; twenty thousand shares of common stock of the Eastern Steamship Corporation at forty-two; two million, five hundred thousand bonds of the Eastern Steamship Corporation at ninety-seven and a half and interest; sixteen first mortgage, six per cent., gold bonds of the Maine Steamship Company of Maine for $17,300 and interest. The debentures of the New England Steamship Company held by this company may be delivered at par and interest in whole or part payment of said purchase.''

Q (*By Mr. English.*) What page are you reading from? A Page forty.

Q And how is the book marked on the cover? A ''Records. No. 3. The New England Navigation Company.''

Q And what period does the book cover? A October, 1910, to date.

*Mr. Faulks.* I offer in evidence the portion of the minutes of the last mentioned meeting which have been read into the record by the witness, and ask the Master to note it on his minutes as exhibit D. 9 for convenience of reference.

*Mr. English.* We call attention to the fact that although they are given a number on the Master's notes it is not itself marked, and ask counsel who produces it to have it marked in evidence.

*Mr. Faulks.* I make the same reply and statement as I did in reference to the previous request of the same kind.

*Mr. English.* And we ask the Master to mark it, and we give notice that in the failure of the exhibit being marked with exhibit number we shall move to strike it out and object to its being read in evidence.

Q Mr. Clark, have you produced any other records called for by the subpoena? A A board of directors' meeting of October 18, 1912.

Q What company? A Of the New England Navigation Company.

Q Appearing in the— A Same book.

Q The same book? A The same book, yes.

Q At what page? A Page fifty-one.

Q I will ask you to read into the record the portion of the minutes of that meeting which is called for by the subpoena. A This is a report of the custodians of securities made at this meeting, and the following entry appears, "The following bonds were deposited in safe No. 8, $2,500,000, five per cent., first and refunding mortgage gold bonds of the Eastern Steamship Corporation, dated January 12, 1912, due December 1, 1941, one thousand dollars each, number 3201—5700 with coupon No. 2 due December 1, 1912, and all subsequent coupons attached." This report was approved and adopted by the board of directors at that meeting.

Q By whom are the minutes of that meeting signed? A By me.

Q And by whom were they kept? A By me.

*Mr. Faulks.* I offer in evidence the portion of those minutes which the witness has just read, and request that he Master will

mark them for purposes of reference on his minutes Exhibit D. 10.

*Mr. English.* We make the same objection and motion as before.

*Mr. Faulks.* I make the same statement in reply.

*Mr. English.* And we give notice, as in the previous case, that we shall move to strike them out and object to their being read.

Q Have you any further record with reference to the New England Navigation Company that is called for by the subpoena? A Board meeting of that company held November 22, 1912.

Q Does this appear in the same book? A The same book.

Q At what page? A Page fifty-two.

Q By whom were the minutes of that meeting kept? A By me.

Q And are they signed by you? A They are signed by me.

Q I will ask you to read into the record the portion of those minutes that is called for by the subpoena. A At this meeting was submitted a report of the custodians of securities in which appears the following record: "The following coupons were removed from the Securities' safes and delivered to the treasurer, who receipted for the same. Coupon No. 2, due December 1, 1912, from $2,500,000, five per cent. first and refunding mortgage gold bonds of the Eastern Steamship Corporation, due December 1, 1941." This report was approved and adopted by the board at that meeting.

*Arthur E. Clark, direct.*

Q Is there something more in the minutes of that same meeting? A There is.

Q Proceed to read it in the record. A At page fifty-three, "Resolved, that the action of the president in executing and delivering in the name and on behalf of this company five instruments dated November 16, 1912, in the form submitted to this meeting, sub-letting to the Eastern Steamship Corporation those certain wharf properties in the City of New York, New York, held by this company by virtue of the following leases: 1. Lease from Mary Colden King and others to the Old Colony Steamboat Company, dated October 14, 1891, of all the bulkhead, pier and wharf rights on the westerly side of West street, known as the Murray Street pier, or pier No. 28, now known as pier No. 18, North River, and one-half of the intervening bulkhead between the said pier and the pier known as the Park Place pier, measured on the westerly line of West street as the same existed on the 1st day of May, 1882, including the wharves, piers and water rights pertaining to the same for the term of twenty years from May 1, 1894.

2. Lease from Frederick W. Rhinelander and others to this company dated February 28, 1911, of all that certain wharf or pier known as pier No. 18, North River, at the foot of Murray street, together with all the rights of wharfage, cranage and emoluments pertaining thereto; also all the rights of wharfage, cranage and emoluments pertaining to the bulkhead running southerly from the northerly line of said pier No. 18 along the westerly side of West street, one hundred and fifty-six feet, more or less, for the term of twenty years, from May 1, 1914.

3 Lease from the City of New York to the Old Colony Steamboat Company, dated September 27, 1904, of all and singular the wharfage which may arise, accrue or become due, for the use and occupation in the manner and at the rates prescribed by law of all that certain public wharf property, situate on the North River and known as pier new number nineteen, North River, for a term of ten years, from December 1, 1904.

4. Lease from the City of New York to this company, dated March 23, 1907, of all and singular the wharfage which may arise, accrue or become due for the use and occupation in the manner and at the rates prescribed by law of all that certain public wharf property situate on the North River and known as extension of pier new number nineteen, North River, outshore to the new pier head line a distance of about one hundred and forty-five feet, for a term expiring December 1, 1914.

5. Lease from the City of New York to this company dated June 5, 1908, of all and singular the wharfage which may arise, accrue or become due for the use and occupation in the manner and at the rates prescribed by law of all that certain public wharf property known as bulkhead between pier new number eighteen, formerly pier old number twenty-eight, and pier new number nineteen, North River, for the term of ten years, from November 1, 1908, be and the same hereby is ratified, affirmed and approved."

*Mr. English.* The witness has read from two different pages, as I understand it, page fifty-two, and afterwards page fifty-three, all one exhibit.

A The same meeting.

Q Is there anything else in the minutes of that meeting that is called for by the subpoena? A No, sir.

*Mr. Faulks.* Now, I will ask to have the Master mark on his record for purpose of reference as Exhibit D. 11 the portions of the minutes of this meeting which the witness has read in evidence.

*Mr. English.* We ask to have the minutes themselves marked in evidence, and give notice that on failure of either counsel or the commissioner to do so we shall move to strike them out and not be read in evidence.

Q Have you any further records of the New England Navigation Company that are called for by the subpoena? A A meeting of the board of directors of June 27, 1913.

Q Appearing on what page? A Page sixty-seven of the same record book.

Q And by whom are the minutes of that meeting signed? A Signed by me.

Q And were they kept by you? A Yes, sir.

Q I will ask you to read the portion of them that is called for by the subpoena.

*Mr. English.* We enter an objection to that because those minutes have been made since this suit was brought; we object to that as immaterial and improper on that ground.

A Meeting of the board of directors, June 27, 1913, appears a report of the custodians of securities in which there is the following record: "The following securities were removed from the Securities' safes and delivered to the treasurer, who receipted for the same; safe No. 5 certificates, twenty thousand shares of the common

stock of the Eastern Steamship Corporation for the purpose of exchange for new certificates on account of the reduction of the par value from fifty dollars to twenty-five per share."

Q Is that all there is in the minutes of that meeting that is called for by the subpoena?

*Mr. English.* What page were you reading from?

A Page sixty-seven. In this same meeting, on page sixty-eight, appears another report of the custodians of securities in which I find the following record: "The following securities were removed from the Securities' safes and delivered to the treasurer, who receipted for the same. Safe No. 8, coupon No. 3, due June 1, 1913, from two million, five hundred thousand, five per cent., first and refunding mortgage gold bonds of the Eastern Steamship Corporation, due 1914."

Q Is there anything else in the minutes of that meeting that is called for by the subpoena? A Nothing further in the minutes of that meeting.

*Mr. Faulks.* I offer the portion of the minutes of the meeting last referred to by the witness, which he has read, in evidence, and ask that the Master for purposes of reference mark them on his record as Exhibit D. 12.

*Mr. English.* Subject to the same motion and same objection as in the case previously not marked in evidence.

Q Have you produced any other records of the New England Navigation Company in response to the subpoena? A Board of directors'

meeting, September 19, 1913, appearing on page seventy-five of the same record book.

*Mr. English.* I object to that as having been made up after the bill was filed.

Q Who kept the minutes of that meeting? A I did.

Q Are they signed by you? A Yes.

Q Please read into the record the portion of the minutes of that meeting that you have referred to? A "The treasurer turned over the following securities which were deposited in safe No. 5: Eastern Steamship Corporation, common stock certificate No. BB 257; The New England Navigation Company, twenty thousand shares."

Q Is there anything else in the minutes of that meeting that is called for? A Nothing else.

*Mr. Faulks.* I offer in evidence the portion of the minutes of the last mentioned meeting, which have just been read into the record by the witness, and request the Master to mark them for purposes of reference as Exhibit D. 13.

*Mr. English.* The same motion and the same notice as in connection with the previous exhibits not marked in evidence.

Q Have you produced any further records of the New England Navigation Company? A A board of directors' meeting October 24, 1913, appearing on page seventy-seven of the same record book.

Q By whom were the minutes of that meeting kept? A They were kept by me.

Q Signed by you? A Yes.

Q Will you read that portion of the minutes into the record, please?

*Mr. English.* Objected to as made up since the bill was filed.

A In this record appears the report of the custodians of securities, "The following coupons removed from securities in safe No. 8 and delivered to the treasurer who receipted for the same as follows: Coupon No. 4, December 1, 1913, from $2,500,000 five per cent. gold bonds of the Eastern Steamship Corporation, due December 1, 1941."

Q Is that all there is in those minutes? A Upon my book.

Q (*By Mr. English.*) "Voted, that the president be and he is hereby authorized in the name and on behalf of this company to assign, quit-claim and release unto the Eastern Steamship Corporation all its right, title and interest to and under a certain lease dated the 27th day of September, 1904, from the City of New York to the Old Colony Steamboat Company, assigned the 29th day of December, 1905, to the New England Navigation Company, of all and singular the wharfage which may arise, accrue or become due for the use and occupation in the manner and at the rates prescribed by law of all that certain public wharf property situated on the North River, in the City and County of New York, and known and described as follows, to wit: Pier new number nineteen, North River, for a term of ten years from December 1, 1904, it being understood that said assignment shall not become effective without the license or consent in writing of the Commissioner of Docks of the City of New York; and voted that the secretary of this company be and he is hereby authorized and directed to affix to said assignment

the seal of this company, and to attest the same."

Q Is there anything else called for by the subpoena that appear in the minutes of that meeting? A No, sir.

*Mr. Faulks.* I offer in evidence the portion of the minutes of the last mentioned meeting which the witness has read into the record, and ask that they be marked on the record as Exhibit D. 14.

*Mr. English.* Subject to the same notice, the same motion, not having been marked by the Master.

Q Have you produced any further records of the New England Navigation Company? A Record of the board of directors' meeting of December 10, 1913, appearing on page seventy-nine in the same record book.

Q And by whom were the minutes of that meeting kept? A Kept by me.

Q And are they signed by you? A Yes.

Q Will you read into the record any portion of them, the minutes of that meeting, that is called for by the subpoena?

*Mr. English.* Objected to as being made up since the bill was filed.

A "Voted that the president be and he is hereby authorized in the name and on behalf of this company to assign, quit-claim and release unto the Eastern Steamship Corporation all its rights, title and interests to and under the following leases: The City of New York to the Old Colony Steamboat Company, dated September 27, 1904, assigned December 29, 1905, to the New England Navigation Company; the City of New York to the New England Navigation Com-

pany, dated March 23, 1905, of all and singular the wharfage which may arise, accrue or become due for the use and occupation in the manner and at the rates prescribed by law of all that certain wharf property situate in the North River, in the city and county of New York, and known and described as follows, to wit: Pier new number nineteen, North River, for a term of ten years, from December 1, 1904; extension pier new nineteen, North River, outshore to the new pier head line a distance of about one hundred and forty-five feet, for a term of years expiring on the first day of December, 1914; it being understood that said assignment shall not become effective without the license and consent in writing of the commissioner of docks for the city of New York. And voted that the secretary of this company be and he is hereby authorized and directed to affix to said assignment the seal of this company, and to attest the same."

Q Is there anything else, anything further in the records of that meeting with reference to the matters called for in the subpoena? A No, sir.

*Mr. Faulks.* I offer in evidence the portion of the minutes of the last mentioned meeting read into the record by the witness, and ask that they be marked on the Master's record D. 15.

*Mr. English.* Subject to our motion and objection as before stated, on the ground that the exhibit itself is not marked in evidence.

Q Are there any further records of the New England Navigation Company relating to the matters mentioned in the subpoena? A No, sir.

Q Have you produced, in response to the requirements of the subpoena, any other records? A The records of the New Haven Railroad, New York, New Haven & Hartford Railroad Company.

Q The minutes of what meetings have you produced? A Meeting of the board of directors of the New York, New Haven & Hartford Railroad Company, dated December 13, 1907.

Q How is that book in which those minutes are contained marked on its cover? A "Directors' records. No. 4. The N. Y., N. H. & H. R. R. Co."

Q And on what page are the minutes to which you have referred? A Page one hundred and six.

Q And what period is covered by the minutes contained in that book? A June, 1907, to and including April 10, 1909.

Q Will you now read into the record the minutes of the meeting of the board of directors to which you have referred as produced in accordance with the requirements of the subpoena? A "The president reported that a proposition had been made for the purchase by this company of the steamers Yale and Harvard, and, after consideration, it was voted that it is inexpedient to purchase said steamers."

Q What is the date of the minutes of the meeting from which you have just read? A December 13, 1907.

Q Is there anything else in the minutes of that meeting with reference to the matters called for by the subpoena? A No, sir.

*Mr. Faulks.* I will offer the portion of the minutes just read by the witness and ask the Master to mark them on his record as D. 16.

*Mr. English.* Subject to the same notice and same motion and objection as before stated, on the ground that the exhibit offered is not marked.

Q By whom are the minutes of that meeting signed? A John G. Parker.

Q He was the secretary of the New Haven Company at that time? A Yes.

Q Are you familiar with his signature? A I am.

Q Is the name signed to those minutes his signature? A It is.

Q In whose custody is this record that you have produced? A In my custody.

Q As secretary of the New Haven Railroad company? A Yes.

Q Now, have you produced any other record of the New Haven Company in accordance with the requirements of the subpoena? A The board of directors' meeting, September 18, 1908.

Q Appearing where? A On this same record book.

Q At what page? A Page two hundred and eleven.

Q And by whom are the minutes of that meeting signed? A John G. Parker.

Q You recognize his signature? A I do.

Q Please read into the record the portion of the minutes of that meeting which is called for by the subpoena.

*Mr. Littleton.* This is objected to on the ground that it appears to be of a date anterior to the incorporation of the defendant, the Metropolitan Steamship Company of New Jersey.

*Mr. English.* And after that objection we make a motion to strike out the minutes of December 13, 1907, on the same grounds.

Q Will you proceed to read them? A "Voted that the directors, Morgan, Miller, Skinner, Bruger and Ledyard be a committee to consider a proposition submitted by the president in regard to the Metropolitan Steamship Line, and report to the board." That is all of that.

Q Is there any thing further in the minutes of that meeting? A No, sir.

*Mr. Faulks.* I will offer the portion of the minutes which the witness has just read in evidence and ask that the Master mark them as Exhibit D. 17.

*Mr. English.* The same objection and the same notice, on the ground that the exhibit is not marked in evidence.

Q Is there anything further in the records of the New York, New Haven & Hartford Company? A In the same record book, page two twenty-five, board meeting, October 10, 1908.

Q On what page do the minutes of this meeting appear? A Two hundred and twenty-five.

Q Of the same book? A Yes.

Q Will you read?

*Mr. Littleton.* The objection that is made to the other is made to this.

A "The following report was submitted. The special committee appointed to consider the proposition concerning the Metropolitan Steamship Line has held two meetings, on September 19th and October 10, 1908, at which all the members of the committee were present, with

the result that the committee respectfully reports to the board that it does not deem it advisable to consider the proposition at present. Adjourned. (Signed) J. G. Parker, secretary. Whereupon it was voted that the foregoing report be accepted and approved and the committee discharged."

Q By whom are the minutes of this meeting of the board of directors signed? A John G. Parker.

Q Do you recognize his signature there? A I do, yes.

*Mr. Faulks.* I offer in evidence the minutes, the portion of the minutes of the last meeting which the witness has just referred to, and ask the Master to mark it Exhibit D. 18 on the record.

*Mr. English.* Subject to the same objection, the same notice, on the ground that the exhibit itself is not marked in evidence.

Q Have you, in response to the subpoena, produced any other records, Mr. Clark? A Yes.

Q Minutes of what meeting, if any is it, of what company? A The New York, New Haven & Hartford Railroad Company.

Q And is it a minute of the meeting of a board of directors or of the stockholders? A Meeting of the board of directors on November 21, 1913.

Q (*By Mr. English.*) You are producing now a different book. What is it? A It is record book of the New York, New Haven & Hartford Railroad Company, board of directors of the New York, New Haven & Hartford, Railroad Company.

Q What is the marking on the cover of this book which you have before you? A "New York, New Haven & Hartford Railroad blotter No. 28. October 22, 1913, new board, to—."

Q And on what page are the minutes to which you have referred recorded? A Page thirteen, of the meeting of October 22, 1913.

Q What period of time is covered by the book? A From which?

Q The book you have before you? A October 22, 1913, to and including May 21, 1914.

Q Now, please read into the record anything from the minutes of the meeting that you have just mentioned that is called for by the subpoena.

*Mr. English.* We object to that on the ground that the record has been made since the bill has been filed.

Q (*By Mr. English.*) What is the date of your minutes? A November 21, 1913.

Q (*By Mr. English.*) Page thirteen? A Page thirteen. "The committee appointed October 3, 1913, to investigate the steamship situation reported recommending the passage of a resolution disposing of this company's interest in the Merchants & Miners Transportation Company and Eastern Steamship Corporation. Whereupon by a motion duly seconded it was resolved that in the judgment of this board the alienation by this company of the Sound Steamship Lines is inadvisable, but that it is advisable to dispose of all the interests of this company in the Merchants & Miners Transportation Company and in the Eastern Steamship Corporation; and the chairman is authorized and directed to report to the board as soon as prac-

ticable any measures that can be devised for carrying this policy into effect."

Q Is there anything else in the minutes of that meeting that is called for by the subpoena? A No, sir.

*Mr. Faulks.* I offer that in evidence and ask that it be marked on the record as Exhibit D. 19.

*Mr. English.* Subject to the same objection and the same motion as before, on the ground that the exhibit is not marked.

Q Have you any further record that is called for by the subpoena? A In the same book board of directors' meeting March 25, 1914, page five of the record.

Q Record of that meeting, you mean? A Yes.

Q (*By Mr. English.*) What is the page in your book? A No page; page in the record.

*Mr. English.* We object to the reading of that on the ground that it is entry made since the bill was filed.

A "The committee appointed October 3, 1913, to wait upon the attorney general of the United States in regard to the suit it was said the government was about to bring against the company, desires to report that after much negotiation, in which the chairman of the board and the committee were assisted by the special counsel, Messrs. Morfield Story of Boston, Walker D. Hines and John W. H. Crim of New York, an agreement was made with the attorney general on Saturday, March 21, 1914, substantially as set forth in the following memorandum prepared by the attorney general and given to the press. Memorandum of the situation in respect of the New

York, New Haven & Hartford Railroad Company. The attorney general has indicated to the representatives of the New York, New Haven & Hartford Railroad Company the arrangements which he thinks would result in bringing the affairs of that company into harmony with law. The representatives of the railroad are willing to accept the requirements indicated and to endeavor to put them into effect without delay, and if approved by the stockholders, in a meeting to be called at once." The indicated arrangements stated in general terms follow. I skip now to four. "The minority stock in the Eastern Steamship Corporation held by the New Haven Railroad shall be sold within three years from July 1, 1914, and in the meantime shall be deprived of voting power." Other provisions follow.

Q Are there any further matters in that part of the record which relate to those that are mentioned in or called for by the subpoena? A No.

*Mr. Faulks.* I offer in evidence the portion of the last mentioned meeting which the witness has just read into the record, and ask that it be marked on the record as Exhibit D. 20.

*Mr. English.* Subject to the same motion and same objection as before, on the ground that the exhibit itself is not marked in evidence.

Q Have you produced any further records, Mr. Clark? A No, sir.

Q Have you produced all of the records of the companies named in the subpoena and each of them that are called for by the subpoena? A So far as I know; after a careful search I have produced everything that I can find.

*Arthur E. Clark, direct.*

Q Do I understand you to say you have made a careful search of all of the records of these companies in order to comply with the subpoena as fully as possible? A Yes.

Q And you found nothing except what you have produced and read into the record? A Yes.

Q And all of these books and records are in your custody? A They are.

Q As the secretary of the New Haven Company and many of its subsidiary companies? A Yes.

Q You are the secretary of each of the companies whose records you have produced today? A I am assistant clerk of the Maine Steamship Company, secretary of all the other companies.

Q Do you know why the Maine Steamship has a clerk as distinguished from a secretary? A Under the Maine law, I think.

Q Required by the Maine law? A Yes, sir.

Q Do you know whether the clerk has to be a resident of Maine? A He does, yes.

Q As the secretary of the companies that you have named, and as the assistant clerk of the Maine Steamship Company, if there were any other records bearing on the matters referred to in the subpoena would you know of it?

*Mr. Littleton.* That is objected to.

Q Yes, sir.

Q Do you know whether or not the New Haven company or any of its subsidiaries has any records of any kind relating to the Chilmark Company, a corporation of the State of New Jersey? A No, sir.

Q Corporation of the State of New York, I mean? A No, sir.

Q You say you do know. Now, I want to know whether there are such records or not? A I will say I don't know of any records.

Q When did you first hear of the Chilmark Company? A The other day in the newspapers.

Q That is the first time you have ever heard of it or seen any mention of it? A Yes.

*Cross examination* by Mr. Littleton.

Q Mr. Clark, where do you reside? A Wallingford, Connecticut.

Q You were served with this subpoena to produce the documents called for? A Yes.

Q Who is the president of the New England Navigation Company? A Mr. Howard Elliott.

Q Preceding Mr. Howard Elliott who was? A Mr. Charles S. Mellen.

Q He has always been while he was president of the New Haven? A So far as I remember, yes.

Q You have produced six books of the various companies which you have given the name of? A Yes.

Q That is correct? A Yes, sir.

Q You have produced one volume of minutes of the board of directors of the New Haven road? A Yes, two volumes.

Q Yes; I stand corrected. A Yes.

Q I take it there are a great many minutes of the New Haven road? A A great many.

Q Great many volumes? A Yes.

Q Do you know how many in all? A I should say there are eight.

Q Did you go over all of them? A Yes.

Q By index? A By search through the record book.

Q You did not undertake to read them all? A I scanned through all the record books, all the records they called for.

Q You scanned the books to see? A I scanned the books to see the records themselves.

Q Did you go through the books of the Maine Steamship Company? A Yes.

Q Have they other books than those you produce? A I think there is one other book.

Q The one you produced was a record, called a record book, wasn't it, the first book you read from? A Yes.

Q That started in 1873 and ended in 1912? A Yes.

Q And called a record book? A Called a record book.

Q Now, is there another book beside that of that same company? A There is.

Q What is that called? A Maine Steamship Company, that is board of directors' record.

Q And is there another one beside the second one you produced? A Yes.

Q What is that? A That is board of directors' record, as I remember.

Q You have not got that? A Not here.

Q You have not produced the third one? A No.

Q Do you know what period that third book covered? A I don't recall, no.

Q Is there any other book that you have not produced? A No, sir.

Q Of the Maine company, I mean? A No, sir.

Q What is that book which runs from 1873 to 1912 which is called the record book? Is that a record of directors' meetings? A That is both records of directors and stockholders.

Q The little book you have there is book of only directors' meetings? A Yes.

Q And the third book, which you did not produce, is also a book of record of the directors' meetings? A Yes; I think there are no stockholders' records in that.

Q The period covered in that you don't remember? A I don't remember.

Q You produce a book of the New England Navigation Company? A Yes.

Q Will you hold that in your hand while I ask you a question or two about it? Perhaps there are two of those, or is there just one, and is that a record of the directors' meeting minutes? A Yes.

Q Are there other minutes of the directors' meetings of that company? A There are.

Q And how many, do you say? A Two.

Q Two volumes? A Two volumes.

Q Do you know what period those two volumes cover? A The first one covers from the organization of the company; I don't know what date, how far it goes; the second one, well, it should end September or October, 1910; this book commences October 8, 1910.

Q The one which ends in October, 1910, you have not produced? A No, sir.

Q The other one which you mentioned, which you haven't produced, of the New England Navigation Company, begins at the organization of the company? A Yes.

Q Now, you have produced some books of other corporations there, Eastern Steamship? A No, sir.

Q What is that? (Indicating.) A Hartford & New York Transportation Company.

Q Hartford & New York Transportation Company? A Yes, sir.

Q Is that a record of the directors' meetings? A Yes.

Q Are there other volumes of that which you have not produced? A This book is the first book of the reorganized company in 1911, and runs to date.

Q Where is the book that precedes that? A In my office, in the old company.

Q And that contains a record of the directors' meetings, does it? A Yes.

Q Of the company before reorganization? A Directors and stockholders.

Q Up to 1911? A Yes.

Q That book you did not produce? A No, sir.

Q Have you books of any other company there? A Of the New Haven road.

Q Is that little volume of the directors' meetings a loose leaf volume which you have bound for convenience sake? A Yes.

Q And did you bind that up yourself? A I did, yes.

Q And from what did you take the leaves that appear in there, from what kind of a book? A This is the original; took it from no book.

Q I don't want you to misunderstand me. Is this a recent binding, or do you keep these leaves which for convenience sake you can take them out? A Yes.

Q Well, the Maine Steamship book which you have there apparently with loose leaves, the smaller one, is that a permanent bound copy? A It is; yes.

Q Is that what those leaves have been kept in all the time? A Yes, always.

Q So that these leaves as they now appear in this volume are not leaves which belong to a larger volume? A No, sir.

Q What I get at is this: is there before this that appears on page 1, you gave it as beginning at page 1; is there before that a record of minutes of the directors' meetings, or is that the beginning? A This is the directors' records from April 8, 1910, the original records and only records of it.

Q Is there a directors' minutes before that? A Oh, yes.

Q Volumes bound like that? A There is; this is one, and the one I mention that I don't have with me.

Q That comes between those two books, is it? A Yes.

Q Is the one you haven't here in the same general condition as that one? A Yes.

Q Kept in the same way? A Kept in the same manner.

Q The provision, the language of paragraph 4 of this subpoena says: "Any and all letters, telegram or other papers received by you or any of you, or by the said New York, New Haven & Hartford Railroad Company or any of its subsidiaries, in any way relating to any of the above named corporations other than the said railroad company, or in reference to the shares of stock or other securities issued by any of the above named corporations or to the business of any of the above named corporations." You do not produce any letters or telegrams in response to that? A No, sir; no, sir, I had none.

Q How many of these subsidiary companies are you secretary to? A Twenty-five or thirty.

Q Twenty-five or thirty? A Yes, sir.

Q And they are kept, their books are kept where? A My office in New Haven.

Q Here? A Yes.

Q Now, who is secretary of the balance of the subsidiary companies? A The Old Colony Railroad Company and the Boston and Maine, those I have nothing to do with.

Q I understood from Mr. Mellen there were about one hundred and fifty subsidiary companies which he testified to.

*Mr. Robbins.* No.

Q I may be mistaken; that is my recollection.

*Mr. Faulks.* Not over twenty-five or thirty active companies, as I recollect.

A There are about twenty-five or thirty alive today.

Q How many active companies, to begin with, are there, subsidiary companies? A I should say twenty-five or thirty.

Q And are you the secretary of those? A Yes.

Q How many companies inactive are there? A Oh, perhaps a dozen.

Q A dozen? A Yes.

Q What state of inactivity? A I am guessing at it.

Q Where are they, any how, where are the records of those companies? A Those that I am secretary of are in my office at New Haven.

Q I take that to be so, but the others? A I don't know anything about most of them—leased lines.

Q Were you the secretary of the Eastern Steamship Corporation? A No, sir.

Q Of the Maine Corporation? A Yes.

Q Maine Company? A Assistant clerk of the Maine Steamship Company.

Q Did you have anything to do with the Eastern Steamship Company? A No, sir.

Q Did you have anything to do with the Metropolitan Steamship Company of Maine, No. 2? A No, sir.

Q You were assistant clerk of the Maine Company? A Yes, Maine Steamship Company.

Q When I say that, of course, I mean that. A We have got in the habit of saying No. 2 for the other one.

Q When were you served with this subpoena? A This last Thursday, I think.

Q A week ago today? A Yes, sir.

Q Well, you didn't begin to examine the books until you were served? A No, sir.

Q And since last Thursday you have made whatever examination you have made? A Yes.

Q You are a pretty active man, aren't you, in the corporation? A Yes.

Q As the secretary of twenty-five or thirty companies you are pretty actively engaged? A Yes, and I did it all myself.

Q How is that? A And I did it all myself; I searched for these records myself personally, carefully.

Q Mr. Clark, I have been more or less afraid to get close to these books, and I could not absorb all that you said. Did you, do I understand you, read from the records of these books the statement that the Eastern Steamship Company transferred its assets to the Maine Company? A No, sir.

Q What was the list of boats that you read off, and by whom and from whom were those boats paid? I confess that I could not carry that

all in my head. A You probably refer to the record I read from the Maine Steamship stockholders' meeting of November 29, 1911.

Q Perhaps I do. A "Voted that the sale by this company of the following steamers, North Land, North Star, Bunker Hill, Old Colony, Massachusetts, with the unexpired insurance upon the same, and of all this company's interest in any wharf property, subject to all mortgages now thereon, but with the assignment of this company's interest in the sinking fund of the said mortgages, is hereby authorized and approved upon the following terms."

Q Before you read all that on the record, there was another one where you named a lot of steamboats. A I am coming to that. "This company is to receive in payment for the property so sold as aforesaid fifteen thousand shares of the preferred capital stock of the Eastern Steamship Corporation, organized under the laws of the State of Maine, and located at Elliott, in said State, of the par value of one hundred dollars each, entitled to dividends of six dollars per share in each calendar year, cumulative after December 31, 1913, and $2 500,000 par value of the first mortgage and refunding five per cent. bonds of said Eastern Steamship Corporation, to be secured by a mortgage covering all the property to be sold as aforesaid, and in addition covering at least the following property: The steamers Catherine, Juliet, Monhegan, Minneola, Bay State, Nahanda, Wiwurna, City of Augusta, Belfast, R. B. Fuller, Camden, J. T. Morse, City of Bangor, City of Rockland, Calvin Austin, Booth Bay, Governor Cobb, Governor Dingley, Southport, Westport, James S. Whitney, H. M. Whitney, Herman Winter, H. F. Dimock, James

Anderson, W. S. McGowan, N. Haven, J. W. Walker, G. H. Prior; the vessel used as a car float and called The Eastern, the vessel used as a car float and called The Western, and also covering all the real estate now owned by the Eastern Steamship Company."

Q Do you understand that mortgage was placed on those boats, is that your understanding of that? A These bonds of the Eastern Steamship Company were secured by a mortgage covering all these boats.

Q (*By Mr. Faulks.*) Is it Company or Corporation? A Company.

Q Who do you understand was the owner of those boats you last read there? A The Eastern Steamship Company.

Q And the Eastern Steamship Company gave a mortgage, executed a mortgage on those boats? A They gave bonds for the boats of the Maine Steamship Company secured by a mortgage on those boats.

Q They gave bonds to the Maine Steamship Company? A Yes.

Q Which were supported by mortgage on these boats? A Yes.

Q And that mortgage was executed by the Eastern Steamship Company? A No, it is Eastern Steamship Corporation.

Q It reads there that way? A It reads Eastern Steamship Corporation issued these bonds which were secured by mortgage on the boats enumerated.

Q Does it appear anywhere how those boats got into the Eastern Steamship Corporation? Haven't you any record showing how the Eastern Steamship Corporation got those boats? Do you know anything about how they got them? A Why, some of these boats, North-

Land and North Star, Bunker Hill, were sold by the Maine Steamship Company to the Eastern Steamship Corporation; they received certain shares of the capital stock and these bonds.

Q Now, how did the other boats that are named there get into the Eastern Steamship Corporation? A I don't know.

Q Is there any record? Did you examine the record for that? A Yes.

Q You mean, you examined the record of the Eastern Steamship Corporation? A Oh, no, sir; my record.

Q Your record? A Yes.

Q Did you make any inquiry as to how the boats got into the Eastern Steamship Corporation? A No, sir.

Q What appears there is the Maine Company transferred to the Eastern Steamship Corporation certain boats for which it got securities? A Yes.

Q And that the Eastern Steamship Corporation executed a mortgage on their steamboats, bonds for which it gave the Maine Company? A Yes.

Q What became of those bonds? A I don't know, sir; I don't know, not of my own knowledge. Perhaps by following my record back I can find out. I think I have read in the record what became of them, but I don't remember off hand what did become of them; not having the financial end of it I don't charge my mind with it.

Q Would you let me look at that you just read? A Certainly.

Q This says, Mr. Clark, and I am just thinking out loud, this company is to receive in payment, that is, this Maine Steamship Company, for the property so sold, that is, the

North Land, North Star, Bunker Hill, Old Colony, Massachusetts, and so forth, as aforesaid, shares of the capital stock of the Eastern Steamship Corporation now being organized under the laws of the State of Maine, of the par value of $2,000,000 and $4,000,000 par value of the first mortgage and refunding five per cent. bonds of the said Eastern Steamship Corporation, to be secured by a mortgage covering all the properties sold aforesaid, that is, these boats, and in addition covering at least the following properties, naming the boats which you named a moment ago, and also covering all the real estate now owned by the Eastern Steamship Company. Now, over there it uses the words, "Also covering all the real estate now owned by the Eastern Steamship Company." We haven't been talking about that Eastern Steamship Company up to that time? A Yes.

Q Does that mean that the Eastern Steamship Company would give a mortgage on its real estate, too, or is that a typographical error in the minutes? A I don't know.

Q And it appears in this list of boats here, it appears here the two Whitney boats, the Herman Winter and Dimock, two car floats; do you know where those boats came from? A No, sir.

Q You have no knowledge of this? A No, sir.

Q Your knowledge only goes to the keeping of these records? A That is all.

Q And the transactions which crystalized into these records you have no knowledge of? A No, sir.

Q You are not a member of the board of directors? A No, sir.

The subpoena to Mr. Clark, marked 2 for identification.

CHARLES S. MELLEN, resumed for

*Further direct examination* by Mr. Faulks.

Q Mr. Clark, the secretary of the New York, New Haven & Hartford Railroad Company, has read into the record the following appearing on page 106 of directors' records No. 4. A What is that record of, what road, what company?

Q New York, New Haven & Hartford. A Yes.

Q It being a part of the minutes of a meeting held December 13, 1907. "The president reported that a proposition had been made for the purchase by this company of the steamers Yale and Harvard, and, after consideration, it was voted that it is inexpedient to purchase said steamers." You were the president of the New York and New Haven Company at that time, were you not? A Yes.

Q Do you remember making that report? A I do not. I have no doubt it is correct.

Q Can you tell us by whom the proposition had been made, proposition that these boats should be sold? A That is what date?

Q December 13, 1907. A I can not tell; I should presume at that time it was from Mr. Morse.

Q Mr. C. W. Morse? A I should presume so. I don't recall any suggestions from any other source at about that time, but I would not want to state it positively, that fact.

Q On page 211 of the same record Mr. Clark read from the minutes of the board of directors, September 18, 1908, the following: "Voted, that directors Morgan, Miller, Skinner, Bruger and Ledyard be a committee to consider a proposition submitted by the president in regard to the Metropolitan Steamship Line, and report to the board"; and he also read from page 225 of the same record book from the minutes of the meeting October 10, 1908, the following: "The following report was submitted. The special committee appointed to consider the proposition concerning the Metropolitan Steamship Line has held two meetings, on September 19th and October 10, 1908, at which all members of the committee were present, with the result that the committee respectfully reports to the board that it does not deem it advisable to consider the proposition at present." Do you remember the proposition that was reported by you as the president of the company as here recited? A That is what date?

Q Your report was made at the meeting held September 18, 1908, and committee reported on October 10, 1908? A I can not think what that was unless it was the proposition of Mr. Morse to give me a one-half interest in the stock of that company that was to buy the property at the reorganization sale; I don't know, can't think what that was unless it is that.

Q Do these minutes correctly recite the action that was taken? A Oh, yes. It was turned down, whatever it was.

Q Nothing came of it? A Nothing came of it.

Q Of either proposition? A Of either proposition.

Q This morning, Mr. Mellen, you were asked as to whether you remembered or knew about a sale of the equity in the Union Wharf of Boston to the Maine Steamship Company. Exhibit D. 3 is part of the minutes of the meeting of the board of directors of that company? A Which company?

Q The Maine Steamship Company, held on Friday, May 5, 1911, reading as follows: "Voted, that this company purchase for $400,000 the equity in the Union Wharf, Boston, Massachusetts, now owned by the Metropolitan Steamship Company, subject to a mortgage of $500,000, and the executive officers of this company are hereby authorized to take such action as shall be necessary to carry into effect the intent of this vote." A Was I a director of that company?

Q You were not recorded as being present at the meeting. A I am very sure I was not president of the company. That was one of the subordinate companies; I was not director of it, I think, I am not quite sure. That is a transaction that must have come to my knowledge in this way. The Maine Steamship Company could not raise the money with which to pay, except by coming to the New Haven road, it is because of that fact that I feel sure that I must have been knowing to the transaction, but it is not a large and important matter that I should tax my memory with it, and it is something that I would have been less likely to remember if it were a transaction of the company of which I was not a member of the board. I was not present.

Q The reading of this minute does not refresh your recollection in any way? A I haven't any doubt but what the minute is cor-

rect, but I do not recall the transaction. I know there was some talk somewhere, somehow about that Union Wharf in Boston; I think we acquired it at about the same time, as I turn my memory back, I think we acquired it about the same time as equity by lease in some other wharf in Boston which was used by our steamers at that time. I don't know what became of it, I think it went to the Merchants and Miners, the equity, I am not quite sure.

*Cross examination* by Mr. Littleton.

Q I notice that the record shows that in 1907 you reported that a proposition had been made for the sale to the New Haven road of the Harvard and Yale; it appears that you reported it? A What time in 1907 was it?

Q He just read it to you, December, 1907. A I don't remember who that proposition could have been from; I don't know anybody I was talking to at that time except Mr. Morse; I don't recall the proposition.

Q You undoubtedly reported it? A Oh, unquestionably.

Q And it was undoubtedly decided not to do it? A Undoubtedly.

Q Then it appears that in 1908 a committee was appointed, or had been appointed, to consider the advisability of buying or taking over the Metropolitan Steamship Line; the committee reported that it was inadvisable at that time; that appears in 1908?? A I don't know who that could have been at that time.

Q Well, it appears, I believe, that a committee was appointed by the directors to report on this, and they reported it was inadvisable at

that time. That is undoubtedly correct, in your opinion? A No question about it.

Q Well, since the record of 1907 as to any proposition made to you was kept carefully, and since the record of 1908 regarding the appointment of this commitee, and their report, was kept carefully, can you state whether or not a similarly careful record was kept of the negotiations between Mr. McGovern and Mr. Goodall and the members of the board in 1909 and 1910? A They did not reach the board, if I remember right.

Q Who did not reach the board? A I don't think any negotiations of Mr. McGovern or Mr. Goodall ever went so far as to receive the attention of the board.

Q But you reported there in 1907 that a proposition had been made to sell the Harvard and Yale. Did you report in 1909 and 1910 that a proposition had been made by McGovern to sell the freight steamers and the wharves? A I don't think that I ever did make any report of that matter of McGovern and Goodall; I think I settled that myself.

Q Well, do you know whether any record was made of the proposition made by McGovern and Goodall? A Unless it is in my files as president of the company, and was concluded by that letter which was read here this morning, I don't think there is any record at all.

Q Well, if you had reported in 1907 a simple proposition to sell the Harvard and Yale wouldn't you record a proposition by McGovern and Goodall in 1909 to sell you the freight boats and the wharves which you considered along with Mr. Robbins and Mr. Ledyard, perhaps others equally important? A Why, the way I would

straighten that out at this late day would be about like this. I probably had a proposition from a party that seemed to be in control of the situation in 1907 and 1908, and I probably in the latter date had a proposition from a party who did not have control but was trying to find a means of getting control, and I did not consider it of sufficient importance to bother my board in the latter case. I had numerous propositions from promoters and people who wanted to sell something as a basis to go and get something to sell. Now, I probably regarded this latter proposition of McGovern and Goodall as that of promoters who had not got anything to sell, but was seeking to trade with me as a basis to make a trade with somebody else. That is about the way I carry it in my mind, but I may be wrong.

Q Well, you wrote a letter on January 7, in which you however used the editorial "we," so to speak; in it, you say, "We have given consideration to your offer to sell to this company certain steamships for $1,500,000." A It was frequently my custom in declining things to lend dignity to it to use the plural, because then it would apply to everybody and everything connected with the company. Many times I hid behind my directors and my directors didn't know I was hiding.

Q Did the rule work the other way, too? A Directors hide behind me?

Q Yes. A I wouldn't be surprised; I can't tell what they may have said; I know what I did.

Q You don't have any recollection of having reported to the board at all events the proposition made by McGovern and Goodall at any

time? A I don't think I did, and I think it was because of my feeling that they were not in a position to make a proposition, that they were on a fishing expedition to see what they could do with me as a basis for their doing something with somebody else. I didn't like to put myself in a position of being used, but if the proposition had been one that had appealed to me which I had wanted to recommend, which I had wanted support from my board I should have gone with it perhaps to my board.

Q This morning when we were discussing this matter, as I understood you, I may be wrong about it, you said that you looked on it as a desirable thing to acquire this property if it had not been that it was pointed out to you by Mr. Robbins and Mr. Ledyard, or Mr. Robbins alone, that the matter was on account of legal complications not feasible? A Yes. Now, the first propositions were propositions made to me which were not investigated, so far as I recall, by counsel, but they were made to me by responsible people, and I thought they were of sufficient importance to take up with my board. The second proposition was a proposition that came to me from promoters and people who hadn't anything to sell. I did not consider that. I had no assurance that if I had put myself in a position of accepting or carrying that before my board of directors I had no knowledge that the parties would have been able to carry out their part of the trade; therefore, I did not feel that that was a matter that I wanted to bother my board about.

Q Well, in 1908, you thought—I don't say you, but it was thought of sufficient importance to appoint a committee to inquire into the advisability of purchasing the Metropolitan Line? A Yes.

Q And the committee did not think at that time it was advisable to do so? A That settled it as far as I was concerned. I was always skirmishing about; a lot of things I never presented to my board of directors. If I should have taken all the things before my board of directors that came before me they would have been in continuous session.

Q I was struck with the fact that you did take it in 1907 and 1908 there, but you did not take it in 1909? A The probabilities are that in 1907 and 1908 the propositions were from people who were really in control or seemed to be in control. The proposition at a later date was from people who were trying to secure control without the necessary means, probably they believing if we first committed ourselves to a transaction it would give them a basis to trade upon.

Q Did you talk with Mr. McKinnon at any time about purchasing these boats? A I do not recall but one interview at which Mr. McKinnon was present, and then I think he said comparatively nothing, and it is the time I think I referred to when Mr. Carrington came with him. I remember those two men, and I think they are the only parties I ever met in connection with the Assets Realization Company.

Q That was before you wrote this letter of January 7, 1910, declining it? A That did not come—that came from Goodall and McGovern, did it not?

Q Yes. A I don't think that necessarily had anything to do with Mr. McKinnon and Carrington.

Q Not necessarily, but the point I am making is did you have your conversation with McKinnon and Carrington prior to the time you wrote

your letter of January 7, 1910, do you think? What is your recollection? A My best recollection would be that it was before the writing of that letter.

Q You knew that McKinnon and Carrington were in the Assets Realization Company? A Oh, yes.

Q And they purported to have the authority, did they not, to dispose of this property? A I suppose they did.

Q I mean, that was your understanding of it at that time? A I supposed that the Assets Realization Company at that time was a responsible company and Mr. McKinnon was responsible officer of that company.

Q You had no reason to doubt, at all events you did not regard them as promoters in the sense that you had to make a proposition before they could sell? A The only part is, that seemed to be particularly understood in this transaction, this later transaction where Mr. McGovern and Mr. Goodall and I had at this later transaction what I had not had at the others. I had distinct and definite advice from Mr. Ledyard and Mr. Robbins that I ought not to have anything to do with it.

Q The point I wish to make, did you report to your board the negotiations you had with McKinnon and Carrington? A I don't think so.

Q So that in the case of McKinnon and Carrington and Goodall and McGovern the two latter propositions regarding the purchase of this property you did not make any report to the board? A I don't think so; I don't recall any.

*Examined* by Mr. Crim.

Q Have you had occasion to discuss this case with Mr. Morse or Mr. Littleton or Mr. Reid

since it was brought? A I met Mr. Littleton once at my rooms at the Vanderbilt Hotel in New York.

Q When? A Well, it is since I retired from the presidency of the road, and it was in connection with this case. I think Mr. Reid was with him. I met on the same evening Mr. Charles W. Morse. I have had various interviews with Mr. Reid and I have had a large amount of correspondence with him.

Q Was there anything said at any of those interviews with regard to your testifying in this case? A Yes; I was advised that a process server was going to serve me in New York. I was notified by Mr. Morse by telephone at my house in Stockbridge last fall that he was going to serve me. I told him that was entirely unnecessary, that my counsel was Mr. Crim, and gave him your address, and if he would notify you at any time that I would respond to any request to give testimony in this case.

Q Since then have you seen any articles in the newspapers which stated that process servers were tryng to apprehend you? A Yes, that they could not find me, and I was at the Hotel Vanderbilt taking my meals in the public room with no attempt at concealment, and I never knew there was a process server after me except what I saw in the papers.

Q And those statements in the newspapers were subsequent to your conversation with Mr. Morse in which you had referred to him to me to accept summons? A Yes.

Q Did you indicate a willingness to testify if Mr. Littleton desired you to when you saw him? A Oh, yes; I told him I would testify, and I think I told him I was afraid I would hurt his

case if I did testify; that I had no interest in the case at all; that I would be very glad to see him win as far as I was personally concerned, but that I did not think I knew enough about the case to be of any assistance, and I was sorry that I could not be of assistance to him.

Q But these newspaper statements that efforts were being made to apprehend you continued during the fall and winter? A Yes, I have seen various—I can not place the exact date, but there have been various newspaper articles that I was difficult to find and that the process servers could not get at me, and all this time it was only necessary to call you by telephone and I would have been produced as soon as could be reasonably expected, wherever I was.

Q You have not at any time attempted to evade any process server? A They have always known where I was; Mr. Morse told me over the telephone when he called me at Stockbridge he thought possibly they would have to take out a commision to examine me up in Massachusetts; I told him that was unnecessary, they could get me in Connecticut or I would come to New York.

Q Have you ever felt reluctant to testify in this matter? A Nothing except I liked Mr. Reid and it seemed to me from the hard-luck story he told me as though he had been wronged in some way; I couldn't just exactly make out how, and I was very glad to be of assistance to him in any way I possibly could.

Q And you have had considerable correspondence during the past year with Mr. Reid in regard to this case? A Fifty or a hundred letters, I should presume, something like that, pretty near one a week, perhaps more. I have

been very prompt in replying to his letters and he has been very prompt in replying to mine; I think I have one from him now that is unanswered.

Q That is all in this connection at this time.

*Re-direct examination* by Mr. Faulks.

Q Is the Mr. Reid you refer to the gentleman sitting at the counsel table here? A The one with the pink boutonniere.

Q (*By Mr. Littleton.*) You understand that you and I might honestly differ as to whether your testimony would hurt or help the case? A Yes, I don't mean to say that you agreed with me.

Q In some of the last questions that Mr. Littleton put to you he assumed that there had been transactions between Messrs. Carrington and McKinnon and yourself looking towards the purchase of the Metropolitan line or some of its property; is that a fact? A I did not gather just exactly, and I have not clearly in my mind now why Mr. McKinnon and Mr. Carrington came into the office at the time of that meeting.

Q Did they make any proposition of sale to you? A My own impression is that they kept remarkably quiet and I was in doubt just exactly what it was they were there for unless to give substance to such suggestions as Mr. McGovern and Mr. Goodall might make, rather sort of a guarantee that these people were there to answer for themselves in case of necessity.

Q Did you ever have any conversation with Mr. C. W. Morse in which he said anything to you about sending the Yale and Harvard out to the Pacific coast? A Not about sending them out. I think the time he called upon me

he talked about them having been sent out, but I don't recall that there was any conversation before they were sent out or after, on his part; I don't know; I don't recall any conversation with him referring to the Harvard and Yale except since they were gone, since they had been sent.

Q Before you were president of the New Haven Company you were interested in railroad companies in the far West, were you not? A I was president for six years of the Northern Pacific Railroad Company before coming to New Haven, and I was five years before that second vice-president of the New Haven.

Q And while you were in the West were you connected with the Union Pacific Company? A I was four years assistant general manager, general traffic manager, in various positions on the Union Pacific system.

JULIAN M. TOMLINSON, being duly sworn according to law on his oath, says:

*Direct examination* by Mr. Faulks.

Q Where do you reside? A Bridgeport, Connecticut.

Q Are you connected with the New Haven Railroad? A I am.

Q In what capacity? A General auditor.

Q How long have you held that position? A Since June 1, 1907.

Q As such general auditor of that company what are your duties? A I am chief accounting officer of the New Haven company, the New England Navigation Company, New England Steamship Company, New England Railroad Company and New Bedford, Martha's Vineyard and Nantucket Steamboat Company.

Q As such chief accounting officer of those companies what are your duties? A I have charge of the accounts of the companies.

Q And are they all kept under your direction? A All under my direction.

Q And are you familiar with all of the books that are involved in the accounting of those companies? A I am.

Q Have you been served with a subpoena similar to the one that was served on Mr. Clark in this proceeding? A I have.

Q Have you produced whatever records and papers you could find that were called for in the subpoena? A I have not brought any books with me; I brought a transcript from the books of one of the companies.

*Mr. Faulks.* Have you any objection to our using the transcript if we prove it is an exact copy and known by the witness to be so?

*Mr. Littleton.* We would like to see what it is.

A This is a transcript from the books of the Maine Steamship Company of Maine showing the acquisition of the Eastern Steamship Corporation securities.

Q Well, does that transcript contain whatever there is on the books of that company with reference to that matter? A Insofar as acquiring the securities of the Eastern Steamship Corporation.

Q Well, annexed to this transcript I notice there are two longer sheets. Does the transcript itself and these sheets contain all of the information appearing on the books of the New Haven Company and of its subsidiaries that are called for by the subpoena that you

have been able to find? A Well, unless it calls for the subsequent sale by the Maine Steamship Company of those securities and the acquisition by the New England Navigation Company of the same securities.

Q Those securities shown here, when I say show I mean on the papers you have produced and handed me, were sold by the Maine Steamship Company to the New England Navigation Company? A Well, they went first to the Hartford & New York Transportation Company.

Q And from that company they were transferred to the— A New England Navigation Company.

Q Those three companies, namely, the Maine Steamship Company, the Hartford & New York Transportation Company and the New England Navigation Company are all subsidiaries of the New Haven, are they not? A Yes.

Q Now, except insofar as you have failed to produce the records of the sales or transfers of those securities, first from the Maine Company to the New York & Hartford Transportation, Maine Steamship Company to the Hartford & New York Transportation Company, and then from that company to the New England Navigation Company, have you produced a copy of everything that appears in the records in your possession? A Yes, I have.

Q Whether they are the records of the New Haven Company itself or its subsidiaries? A That transcript shows the sale of the securities on the right hand side.

Q Now, is there anything else that appears in the books of the records of the New Haven or any of its subsidiaries that are in your

possession and control as the auditor of the company, and covered by the subpoena, which does not appear on the transcript and sheets annexed to it which you have produced? A Except what I have already said, that there is no transcript and entries on the books of the New England Navigation Company.

Q Showing their sale of the securities which appear here? A Showing the acquisition by the Navigation company of the securities.

Q The sale appears, but not the acquisition, is that the idea? A The securities went from the Maine Steamship Company to the Hartford & New York Transportation Company and were acquired by the New England Navigation Company from the Hartford & New York Transportation Company.

Q Now, with the exception of that transaction have you produced a copy of everything that is called for in the subpoena? A Everything that I could locate or find.

Q Did you make a search? A Not personally.

Q Did you have it made? A I had it made by a competent man.

Q A man who is familiar with the records? A A man who has been my chief clerk for years.

Q And did he report to you that he had found everything that he could?

*Mr. Littleton.* That is objected to.

Q What did he report to you as to the search he had made?

*Mr. Littleton.* I object.

A He reported that this was everything he could find.

Q Now, from your familiarity and knowledge of all of the books and accounts of the New Haven company and of its subsidiaries that are under your control, have you any knowledge of any other transactions in reference to the matters and things mentioned or called for by the subpoena, except those that are shown on the papers which you have produced? A I have not.

Q And do these papers contain true and correct copies of the entries? A To the best of my knowledge and belief.

Q Now, these entries, as I understand, all relate to the securities of the Eastern Steamship Corporation? A They relate to the sale of the steamers and other property of the Maine Steamship Company to the Eastern Steamship Corporation and the acquisition of the Eastern Steamship Corporation securities.

Q In payment therefor? A In payment therefor.

*Mr. Faulks.* Now, I am going to ask the gentlemen to let us offer this transcript and the sheets annexed to it, with the same force and effect as if the original books had been produced. I give you this assurance, that Mr. Tomlinson said he would produce the books themselves, if you desire, and of course he will, but I thought that subject to your examination—

*Mr. Littleton.* They don't mean anything to us.

*Mr. Faulks.* They mean just as much as the books themselves.

*Mr. Littleton.* We don't like to be put in the position of simply making trouble for you. The evidence is objectionable on

the ground that it is not the best evidence, on the ground that the information is on the report of somebody else who made the investigations of the books, and hearsay evidence as far as this witness is concerned, and on that ground we will be compelled to object to it.

*Mr. Faulks.* I will say now that I am not going to call Mr. Robbins to give his deposition under this notice, because he has informed me that he will be present at the hearing in Newark and testify at that time. The only other witness named in the notice is Mr. May, and if we call him tomorrow morning he will be short.

I will offer this transcript in evidence in place of the original books, and ask counsel to take it under advisement and let me know before the hearing is closed whether or not we may use it instead of the books themselves. I also want it to appear on the record that if counsel consent to the acceptance of this in evidence in place of the books themselves that we will understand they are only doing so subject to the right to examine the books in order to ascertain whether or not these entries are correctly copied from the books.

AUGUSTUS S. MAY, being duly sworn according to law, on his oath says:

*Direct examination* by Mr. Faulks.

Q Mr. May, where do you reside? A In Bridgeport, Connecticut.

Q Are you connected with the New Haven Railroad Company? A Yes.

Q In what capacity? A I am treasurer.

*Augustus S. May, direct.*

Q And how long have you been treasurer of that company? A Ten years.

Q Are you also the treasurer of its subsidiariary companies? A Most of them, yes.

Q Of practically all the active companies? A Yes.

Q As treasurer of the New Haven Company and its subsidiaries that you have mentioned what are your duties? A I am charged with accounting for the receipts of the road and the disbursements, and the custody of the securities.

Q And also have the custody of the financial books of the company? A No, sir.

Q Those are in the accounting department? A Yes, sir.

Q Are you treasurer, among other subsidiaries, of the New England Navigation Company, the Hartford & New York Transportation Company and the Maine Steamship Company? A All except the Maine Steamship Company; that I am not now treasurer of.

Q Have you been treasurer of that company? A Yes.

Q For what period? A I don't remember.

Q The Maine Steamship Company has gone out of existence, has it not? A Yes.

Q And were you its treasurer up to the time it was liquidated? A I believe so.

Q Now, have you been served with a subpoena in this case similar to the one that was served upon Mr. Clark and the one that was served upon Mr. Tomlinson? A Yes.

Q Have you produced all of the records and papers of the New Haven Company, or any of its subsidiaries, that are called for in that subpoena? A Only in one case that I was able

to produce, and that was the requirement under article No. 5 of the subpoena.

Q Number 5 as you call it is paragraph 5 of the subpoena, which calls for the records of the New Haven Company or its subsidiaries with reference to a loan of $1,000,000 made by the Bank of Manhattan Company of the city of New York and State of New York to the New Haven Company on or about February 14, 1910, or as to the use made of the proceeds of such loan, is it not? A Yes.

Q Are the records that you have produced all of the records in your custody or control that are called for by the subpoena? A So far as I know, yes.

Q And all that relate to the matter of the loan that I have just mentioned, or to the use made of the proceeds thereof? A Yes.

Q Now, please get out whatever record you have produced. Do you know of this loan? A Yes, sir.

Q You know what disposition or use was made of the proceeds of it? A Yes, sir.

Q What was done with the proceeds of the loan? A Meeting various requirements of the business of the company covered by the approved vouchers passed up to me for payment.

Q Did it have anything whatever to do with any of the property, steamships, docks, or other kinds of property of the Metropolitan Steamship Company of New Jersey? A Not to my knowledge.

Q Was it used for the purpose of acquiring, or used in part or in whole for the purpose of acquiring or paying for any of the property or any of the securities of that company? A No, sir.

Q In a general way, what was it used for? A Well, on the 14th of February we appear to have borrowed $1,000,000 of the Manhattan company, giving for that four notes of $250,000 each. Following that credit on the 14th of February, 1910, these various checks were drawn against the balance to the credit of the New Haven company to the Manhattan company.

Q Well, you say these various checks. Now, what was the purpose of those checks, what was the proceeds of the loan used for, in a general way? I don't want you to tell what each check was, don't want you take time for that. A Evidently to meet contractors' vouchers, payment of material bills.

Q General current expenses of the company? A Yes, general expenses of the company.

Q Was any part of it used in payment for any securities or property of the Metropolitan Steamship Company?

*Mr. English.* Objected to as leading.

A No, sir.

Q Have you examined the vouchers in your possession, or the stubs of the books from which the vouchers were drawn, in order to enable you to say whether or not any such use was made of the proceeds of that loan? A Being the treasurer of the company and the custodian of the securities I would undoubtedly be apt to say definitely no to that question; I never saw any security of the kind.

*Examined* by Mr. Ward.

Q To your knowledge, does the New Haven railroad or any of its subsidiaries own any of the securities of the Pacific Navigation Company? A No, sir.

*Augustus S. May, direct.*

Q Did it ever own any? A No, sir.

Q Directly or indirectly, to your knowledge? A No, sir.

*Further direct examination* by Mr. Faulks.

Q Does the New Haven company or any of its subsidiaries own, or did it or they ever own any stock or other securities of the Eastern Securities Company? A No, sir.

Q I ask the same question with regard to the Chilmark Company? A No, sir.

Q And with regard to the New England Securities Company? A No, sir.

Q The same question with regard to the Metropolitan Steamship Company of New Jersey? A No, sir.

Q And the same question with regard to the Eastern Steamship Company, not the corporation, but company? A Eastern Steamship Company; no, sir.

Q (*By Mr. Littleton.*) One question was asked—I don't know whether I got it exactly as you meant it or whether you meant it like I got it—whether the New Haven, or any of its subsidiaries, ever owned any stock of the Metropolitan Steamship Company of New Jersey. Was that the way you meant it?

*Mr. Faulks.* Stock or other securities.

Q So far as you know, or have any reason to believe, has the New Haven Company had any interest, directly or indirectly, in any of the stock or other securities of any of the companies which I have just mentioned, namely, which Mr. Ward or I have just mentioned, namely, the Pacific Navigation Company, the Eastern Securities Company, the Chilmark Company, the New Eng-

land Securities Company, the Metropolitan Steamship Company of New Jersey, and the Metropolitan Steamship Company of Maine?

*Mr. Littleton.* Objection is made to that; the witness obviously ought not to be asked the question, as far as he has got any reason to believe.

A No, sir.

Q As the treasurer of the New Haven Company and of its subsidiaries, are the securities owned and possessed by those companies, or any of them, in your possession? I mean are you the man who has charge of the securities? A They come to me first, and are then put into the custody of the custodians of securities.

Q Are you one of those custodians? A Yes.

Q And before they go to the custodians they go to you, and from you to them? A Yes, and the report of the custodians of the holdings of the custodians is made to the board of directors.

Q And as treasurer of the company, and one of the custodians of its securities, would you know if it or its subsidiaries had any such securities?

*Mr. Littleton.* That is objected to on the ground that it is obviously unfair to ask the witness would he know.

Q You may answer, Mr. May. A Yes.

Q Do I understand you to say that so far as you know or have any reason to believe that neither the New Haven or its subsidiaries either own or possess or have any interest, directly or indirectly, in the stock or other securities of the companies named?

*Mr. Littleton.* That is objected to on the ground that his reasons to believe are not to be regarded as evidence; also the leading character of the question.

A Yes.

*Cross examination* by Mr. Littleton.

Q When did you become acquainted with these companies that have been named here? A Upon the receipt of the subpoena.

Q Never heard of these companies before? A Well, owing to the activity of the newspapers I have read of them, especially of late.

Q No other way? A No other way, sir.

Q Never heard of the Metropolitan Steamship Company of New Jersey? A Oh, yes.

Q You have heard of the Eastern Steamship Company? A Certainly, sir. I might help you, Mr. Littleton, by saying I have been in the treasurer's office of the New Haven road a great many years, and naturally I would hear of such things.

Q Did you hear of the Metropolitan Steamship Company of Maine, No. 2? A I don't know as I ever have, the Metropolitan Steamship Company, No. 2?

Q How many custodians are there? A Two directors and the treasurer, sir.

Q Two directors of the company? A Yes, sir.

Q New Haven Company? A Yes.

Q And the treasurer comprised what is known as the custodian? A Yes.

Q What are these custodians of, stocks, securities? A Yes.

*Augustus S. May, re-direct.*

Q Where do they keep the stock? A In the vault of the New Haven in our office building in the treasurer's office.

Q Well, do you keep other securities beside the subsidiary companies? A Oh, yes, all of the securities of the New Haven Company and its leased or controlled lines have been held in custody for quite a number of years.

*Re-direct examination* by Mr. Faulks.

Q Mr. May, how are these securiities kept in custody? A They are kept in the vaults, which have three combination locks; each member of the committee have a combination, and the safe cannot be unlocked until all three combinations are worked by the custodians.

Q So that all three of the custodians must be present when the safe is locked or unlocked? A Yes.

*Mr. Littleton.* In so far as the objection I made to the transcript produced by the witness Tomlinson, auditor of the New Haven road, upon the ground that it was not the best evidence, I withdraw that objection. I do not wish to withdraw the objection to the evidence as to his stating what was reported to him by others than himself regarding the contents of the books. That would be objected to, but I do not make the point that this is not the best evidence which was made before.

*Mr. Faulks.* I understand then we may use it with the same force and effect that we could use the books themselves if Mr. Tomlinson had produced them.

*Mr. Littleton.* Subject, however, to the objection that he has no personal knowledge

of the correctness of the reports made to him by those who he assigned to make the report, except what they told him.

*Mr. Faulks.* I will ask the stenographer to give it the next number.

Marked Exhibit D. 21.

The May subpoena marked 3 for identification.

The Tomlinson subpoena marked 4 for identification.

*Mr. English.* Mr. Faulks. states this closes the taking of testimony under the notice served.

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

I hereby certify that the foregoing depositions were taken before me in the city of New Haven, Connecticut, at the Taft Hotel, pursuant to notice hereto annexed, on Thursday, June 28, 1914, in the presence of Mr. Conover English, of McCarter & English, Mr. Martin W. Littleton, Mr. Owen N. Brown and Mr. E. A. G. Wylie (of the New York bar), representing the complainants. Mr. Frederick J. Faulks, of Lindabury, Depue & Faulks, and Mr. Douglas Nicholson (of the New York bar), for the defendants, Metropolitan Steamship Company, Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes. Mr. Waldron M. Ward, of Pitney, Hardin & Skinner, and Mr. Mortimer E. Joiner (of the New York bar), for the defendant, The Pacific Navigation Company. Mr. J. W. H. Crim, personal counsel for Mr. Charles S. Mellen.

*Certificate of Master.*

I further certify that the testimony was taken stenographically by me, and I certify that the foregoing testimony is a true and correct transcript of the testimony of the witnesses and the proceedings before me.

Dated June 2, 1914.

JESSE R. SALMON,
*Master in Chancery of New Jersey.*

New Jersey State Library

*Exhibit C. 1.*

## EXHIBITS.

### Exhibit C. 1.

Re-organization agreement of Maine Co. (No. 1.)

METROPOLITAN STEAMSHIP COMPANY.

PLAN AND AGREEMENTS
OF
REORGANIZATION.

Dated May 1, 1909.

AGREEMENT, made the first day of May, 1909, between George E. Shaw, Henry Hornblower, and John W. McKinnon (hereinafter called the Reorganization Managers), and Russell G. Fessenden, Edward F. Murray and Oliver E. Williams (hereinafter called the Committee).

WHEREAS, the Reorganization Managers are acting as such under a Plan of Reorganization of the Metropolitan Steamship Company, dated May 1, 1909, a copy of which is hereto attached and made a part hereof; and

WHEREAS, the Committee was constituted and appointed a Committee of the First Mortgage Sinking Fund Five Per Cent. Bonds of the Metropolitan Steamship Company under a Deposit Agreement, dated April 1, 1908; and

WHEREAS, the Reorganization Managers have entered into agreements of even date herewith, copies of which Agreements are hereto attached and made part hereof; and

WHEREAS, this agreement and the Plan of Reorganization and agreements attached hereto constitute a single instrument and are to be read together; and

*Exhibit C. 1.*

WHEREAS, under paragraph seventh of said Deposit Agreement of April 1, 1908, the Committee is vested with power, in its discretion, to submit to the depositing bondholders under said agreement a plan for the reorganization of the Metropolitan Steamship Company, and have approved the Plan of Reorganization hereto attached, subject to the terms and conditions of this agreement and the agreements hereto attached;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that the parties hereto, in consideration of the premises and for a valuable consideration, have mutually agreed and do hereby mutually agree together as follows:

FIRST.—If the property of Metropolitan Steamship Company is purchased by the Reorganization Managers, they shall organize a corporation and cause the securities thereof to be issued in accordance with said Plan of Reorganization and shall deliver or cause to be delivered to the Committee or its order, for distribution among the depositors under the said Deposit Agreement of April 1, 1908, (a) such an amount of the bonds of the New Company as shall equal in face value the face value of the First Mortgage Sinking Fund Five Per Cent. Bonds of the Metropolitan Steamship Company deposited under said agreement and assenting to the Plan of Reorganization; (b) such an amount of the stock of the New Company as shall equal in face value the face value of the coupons due November 1, 1908, and May 1, 1909, upon the bonds deposited under said agreement and assenting to the Plan of Reorganization; and (c) such an amount in cash as shall be equal to the interest between May 1, 1909, and the date of the new mortgage, on

the bonds deposited under said agreement and assenting to the Plan of Reorganization.

The bonds of the New Company shall be secured by a First Mortgage to the American Trust Company, Trustee, upon all the property of the New Company, with the exception of the existing mortgage upon the Union Wharf in Boston, and provision shall be made in said mortgage for a sinking fund of fifty thousand dollars per annum, the first payment to be made three years after the date of the new mortgage; the sinking fund shall continue at the same rate, until the stock of the New Company shall have received a dividend at a rate in excess of four per cent. per annum, in which event the sinking fund shall be increased to one hundred thousand dollars per annum.

Such bonds of the New Company as shall be from time to time acquired for the sinking fund shall be kept alive and may be reissued from time to time for the acquisition of new property at seventy-five per cent. of the cost price thereof, any such new property to be subjected to the lien of the new mortgage.

The form of said mortgage and the bonds issued thereunder shall be satisfactory to the Committee.

In case there are liens upon the property at the time of the issue of the securities of the New Company, the amount and validity of which are in controversy, the new mortgage may be given subject to such liens, provided that the Reorganization Managers give the Trustee under the mortgage security satisfactory, in the judgment of the Committee, to provide for the payment of such liens, when and as the amount of the same shall be determined, judicially or otherwise.

*Exhibit C. 1.*

SECOND.—In the event of the purchase by the Reorganization Managers of the property of the Metropolitan Steamship Company, then and in that event the Committee shall, upon the written demand of the Reorganization Managers, deliver or cause to be delivered by the Depository named in said Deposit Agreement such of the deposited bonds as may have assented to the Plan of Reorganization to the officer or officers who may be appointed by the Circuit Court of the United States for the District of Maine to conduct the contemplated foreclosure sale, to the end that the said bonds may become available to the Reorganization Managers in part payment of the purchase price of said property.

In the event of such purchase by the Reorganization Managers, the property purchased and all rights therein and all rights in the bid shall be conveyed or assigned to two persons named respectively by the Reorganization Managers and the Committee, to be held in trust by such persons until the conveyance and transfer thereof to the New Company.

THIRD.—If the purchase is made by the Committee, the Reorganization Managers shall loan to the Committee, at its request, from time to time as called for by the Committee, upon the bonds deposited under said Deposit Agreement of April 1, 1908, as collateral security or upon the property of the Metropolitan Steamship Company, if and when the same is purchased by the Committee, such amounts as shall be sufficient to enable the Committee to purchase said property for the account of its depositing bondholders, free and clear of all prior liens and expenses; and the Committee shall be the sole judge of the amount or amounts required to provide for such prior liens and expenses.

*Exhibit C. 1.*

The amounts so loaned shall be repayable, with interest at the rate of six per cent. per annum, from the respective dates of the several advances, at the expiration of one year and three months from the date of the first advance, with the option of the Committee, upon thirty days' previous notice in writing, to repay the whole of said advances or any part thereof at any time prior to the date of the maturity of the loan, and in such case, the Reorganization Managers on their part shall have the option to purchase from the Committee such an amount of securities of any new corporation which may be formed by the Committee to take over the property as shall be equal to the amount to which non-depositing and non-assenting bondholders would have been entitled, if they had deposited their bonds and assented to the Plan of Reorganization, the option price of such securities to the Reorganization Managers being the distributive share of such non-depositing and non-assenting bondholders in the net proceeds of the sale of the property.

FOURTH.—Neither the Committee nor any member thereof assumes any individual responsibility for the execution of this agreement or any part thereof, nor for the result of any steps taken or acts done for the purposes thereof, nor shall the Committee or any member thereof be individually liable for any act of omission of any agent or employee or for any error of judgment or mistake of fact or law, or in any case except for its, his, or their own individual wilful malfeasance or neglect.

FIFTH.—The Committee shall forthwith deposit copies of this agreement with the Depositary named in said Deposit Agreement of

*Exhibit C. 1.*

April 1, 1908, and mail or cause to be mailed a copy thereof, postpaid, to each person registered on the books of the Committee kept by said Depositary as the owner of a certificate of deposit at his post office address, as such address shall appear upon such books, and the Committee shall, in the event of receiving assents of seventy-five per cent. in amount of such certificates of deposit, declare the Plan of Reorganization binding on the bondholders represented by it.

The Committee shall further mail or cause to be mailed to each depositor at the time of the mailing of this agreement a circular, wherein the Committee shall briefly outline the Plan of Reorganization and recommend its acceptance by its depositing bondholders.

In Witness Whereof, the Reorganization Managers and the members of the Committee have severally hereunto subscribed their respective names.

GEORGE E. SHAW,
HENRY HORNBLOWER,
JOHN W. McKINNON,
*Reorganization Managers.*

RUSSELL G. FESSENDEN,
EDWARD F. MURRAY,
OLIVER E. WILLIAMS,
*Committee.*

GUARANTY.

In consideration of the execution of the foregoing agreement by the Committee, at the request of Assets Realization Company, a corporation organized under the laws of the State of New Jersey, and having its principal place of business in the City of Philadelphia, Assets

*Exhibit C. 1.*

Realization Company guarantees the full and prompt performance of the provisions of said Agreement by the Reorganization Managers, and agrees that in case the Reorganization Managers do not advance the funds of the Committee, for the purchase of the property of Metropolitan Steamship Company, as provided in said Agreement, Assets Realization Company will immediately advance such funds, on the same terms on which the Reorganization Managers have agreed to advance the same.

ASSETS REALIZATION COMPANY,
By THEODORE FROTHINGHAM,
*Treasurer.*

[SEAL.]

METROPOLITAN STEAMSHIP COMPANY.
PLAN OF REORGANIZATION.

I.

PRESENT DEBT.

(All figures as of December 31, 1908, Balance Sheet.)

| | |
|---|---|
| Debt secured by Mortgage | |
| First Mortgage Five Per Cent. Sinking Fund Bonds, part of an authorized issue of $3,000,0000, secured by mortgage to American Loan & Trust Company, Trustee | $2,509,000.00 |
| Accrued interest | " 82,981.18 |
| Total | "2,591,981.18 |

*Exhibit C. 1.*

| | | |
|---|---|---|
| Debt secured by Collateral | | |
| Account with Hornblower & Weeks | " | 139,601.22 |
| Accrued interest, 332 days | " | 7,724.60 |
| Total | " | 147,325.82 |
| Preferred Debt | | |
| Including Receivers' Certificates, compensation of Receivers, expenses of foreclosure, etc., about. | " | 1,024,750.21 |
| Unsecured Debt | | |
| Notes of Metropolitan Steamship Company | " | 810,356.52 |
| Miscellaneous claims | " | 233,545.89 |
| Total | " | 1,043,902.41 |

## II.

### Method of Procedure.

At the request of the holders of a majority of the bonds of and unsecured claims against Metropolitan Steamship Company, the undersigned have consented to act as Reorganization Managers under this Plan of Reorganization, and will use their best efforts as such Reorganization Managers to carry the Plan into effect.

The Plan of Reorganization contemplates, that the Reorganization Managers form or cause to be formed under the laws of the State of Maine or under the laws of such other State as may be convenient, a company to be known as "Metropolitan Steamship Lines" (hereinafter called the

*Exhibit C. 1.*

"New Company"), which shall have authorized issues of securities as follows, to wit:

| | |
|---|---|
| 30,000 shares of common capital stock of the par value of $100 each..... | $3,000,000 |
| First Mortgage Five Per Cent. Thirty-Year Sinking Fund Bonds.. | "3,000,000 |
| Two-Year Six Per Cent. Gold Notes.. | " 500,000 |
| | "6,500,000 |

The Plan of Reorganization further contemplates that the Reorganization Managers purchase, or cause to be purchased, at a contemplated sale thereof under a decree of foreclosure of the existing mortgage, all the properties of Metropolitan Steamship Company, provided the same can be purchased at a reasonable figure, and if and when the properties are purchased, that the Reorganization Managers convey or cause the same to be conveyed to the New Company, free of all liens except the lien of the existing mortgage on the Union Wharf in Boston.

If and when the properties are conveyed to the New Company, it shall deliver to the Reorganization Managers, or to their order, its authorized issues of stock, bonds and notes, in the respective amounts hereinbefore specified, and the securities so issued to the Reorganization Managers shall be available in their hands for exchange or sale under agreements of even date herewith, as follows, to wit:

(a) An agreement between the Reorganization Managers and a Committee of the holders of the First Mortgage Sinking Fund Five Per Cent. Bonds of Metropolitan Steamship Company under a Deposit Agreement dated April 1, 1908;

*Exhibit C. 1.*

(b) An agreement between the Reorganization Managers and a Committee of the unsecured creditors of Metropolitan Steamship Company, under a Creditors' Agreement dated April 15, 1908; and

(c) An agreement between the Reorganization Managers and the Assets Realization Company, a corporation organized under the laws of the State of New Jersey.

Dated May 1, 1909.

GEORGE E. SHAW,
HENRY HORNBLOWER,
JOHN W. McKINNON,
*Reorganization Managers.*

THIS AGREEMENT, made the First day of May, 1909, between GEORGE E. SHAW, HENRY HORNBLOWER and JOHN W. McKINNON (hereinafter called the "Reorganization Managers"), parties of the first part, and PHILIP STOCKTON, HENRY D. TUDOR and THOMAS D. ADAMS (hereinafter called the "Committee"), parties of the second part

WHEREAS, the Reorganization Managers are acting as such Reorganization Managers under a Plan of Reorganization of Metropolitan Steamship Company, dated May 1, 1909, a copy of which is hereto attached and made a part hereof; and

WHEREAS, the Committee was constituted and appointed a Committee for the holders of notes of and claims against the Metropolitan Steamship Company under a Creditors' Agreement, dated April 15, 1908; and

WHEREAS, the Reorganization Managers have entered into agreements of even date herewith

*Exhibit C. 1.*

copies of which are hereto attached and made part hereof; and

WHEREAS, this Agreement and the Plan of Reorganization and the Agreements attached hereto constitute a single instrument and are to be read together; and

WHEREAS, under paragraph Fifth of said Creditors' Agreement of April 15, 1908, the Committee is vested with power, in its discretion, to prepare a Plan of Reorganization of the Metropolitan Steamship Company or to approve any Plan prepared by others, and has approved the Plan of Reorganization hereto attached, subject to the terms and conditions of this Agreement and the Agreements hereto attached;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that the parties hereto, in consideration of the premises and for a valuable consideration, have mutually agreed and do hereby mutually agree together as follows:

FIRST.—If the property of Metropolitan Steamship Company is purchased by the Reorganization Managers, they shall organize a corporation and cause the securities thereof to be issued in accordance with said Plan, and shall deliver or cause to be delivered to the Committee or its order, for distribution among the depositors under said Creditor's Agreement of April 15, 1908, an amount of the stock of the new company which shall be equal in face value to the face value of the notes of and claims against Metropolitan Steamship Company, deposited under said Agreement and assenting to the Plan of Reorganization.

SECOND.—The Committee shall forthwith deposit copies of this Agreement with the Deposi-

*Exhibit C. 1.*

tary named in said Creditors' Agreement of April 15, 1908, and mail or cause to be mailed a copy thereof, postpaid, to each person registered on the books of the Commitee, kept by said Depositary as the owner of a certificate of deposit issued under said Agreement, at his post office address, as such address shall appear upon such books, and shall also mail to each depositor at the time of the mailing of this Agreement a circular, wherein the Committee shall briefly outline the Plan of Reorganization as limited and defined by this Agreement and the Agreements hereto attached, recommend its acceptance by the depositors under said Agreement and limit the time within which such acceptance may be given to ten days after the mailing of this Agreement and said circular.

THIRD.—In the event of the purchase by the Reorganization Managers of the properties of Metropolitan Steamship Company, then and in that event the Committee shall, upon the written demand of the Reorganization Managers, deliver or cause to be delivered by the Depositary named in said Creditors' Agreement such of the deposited notes of and claims against Metropolitan Steamship Company, as may have assented to the Plan of Reorganization, to the end that the same may be used by the Reorganization Managers in part payment for the property of Metropolitan Steamship Company.

*Exhibit C. 1.*

IN WITNESS WHEREOF, the Reorganization Managers and the members of the Committee have severally hereunto subscribed their respective names.

GEORGE E. SHAW,
HENRY HORNBLOWER,
JOHN W. McKINNON,
*Reorganization Managers.*

PHILIP STOCKTON,
HENRY D. TUDOR,
THOMAS D. ADAMS,
*Committee.*

AGREEMENT, made the First day of May, 1909, between GEORGE E. SHAW, HENRY HORNBLOWER and JOHN W. McKINNON (Hereinafter called the "Reorganization Managers"), parties of the first part, and ASSETS REALIZATION COMPANY, a corporation organized under the laws of the State of New Jersey (hereinafter called the "Company"), party of the second part:

WHEREAS, the Reorganization Managers are acting as such Reorganization Managers under a Plan of Reorganization of Metropolitan Steamship Company, dated May 1, 1909, a copy of which is hereto attached and made a part hereof; and

WHEREAS, the Reorganization Managers have entered into Agreements of even date herewith, copies of which are hereto attached and made part hereof; and

WHEREAS, this Agreement and the Plan of Reorganization and the Agreements attached hereto constitute a single instrument, and are to be read together; and

*Exhibit C. 1.*

WHEREAS, the Company has guaranteed the performance by the Reorganization Managers of the obligations assumed by the Reorganization Managers in the Agreement dated May 1, 1909, hereto attached, between the Reorganization Managers and a Committee composed of Russell G. Fessenden, Edward F. Murray and Oliver E. Williams;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That the parties hereto, in consideration of the premises and for a valuable consideration, have mutually agreed and do hereby mutually agree together, as follows:

FIRST.—The Company shall furnish to the Reorganization Managers, at their request from time to time, such amounts of money as shall be necessary to enable the Reorganization Managers to carry out, execute and perform each and every obligation assumed by them under the Agreement of May 1, 1909, above referred to, or at the option of the Reorganization Managers, the Company shall furnish them such of the securities coming into its hands under this Agreement, or such an amount of cash and such securities as may, in the judgment of the Reorganization Managers, be necessary to enable them to carry out, execute and perform each and very obligation assumed by them under said Agreement.

SECOND.—If and when the securities of the new company shall have been issued to the Reorganization Managers in the manner contemplated in the Plan of Reorganization hereto attached, the Reorganization Managers shall deliver or cause to be delivered to the Company all of said securities not specifically appropriated to the purposes named in the Agreements hereto attached, it being distinctly

*Exhibit C. 1.*

understood and agreed, that the delivery of the said securities by the Reorganization Managers shall operate as a payment to the Company for the obligations assumed by the Company under this Agreement, and for the advances made by the Company under this Agreement at the time of the delivery of said securities, and the Company shall accept such securities in full satisfaction and discharge of any and all obligations of the Reorganization Managers under this Agreement or otherwise.

In Witness Whereof, the Reorganization Managers have severally hereunto subscribed their respective names, and the Assets Realization Company, pursuant to due corporate authority, has caused this instrument to be executed in its name by its President and its corporate seal to be hereunto affixed, attested by its Secretary.

GEORGE E. SHAW,
HENRY HORNBLOWER,
JOHN W. McKINNON,
*Reorganization Managers.*

[seal.]

ASSETS REALIZATION COMPANY,
George E. Shaw,
*President.*

Attest: Theodore Frothingham, *Secretary.*

*Exhibits C. 2—C. 5.*

## Exhibit C. 2.

Certificate of incorporation of Metropolitan S. S. Co. of New Jersey. (See Schedule A. annexed to bill of complaint.)

## Exhibit C. 3.

Annual report of Metropolitan S. S. Co. of New Jersey filed November 27, 1900. (See Schedule C. annexed to bill of complaint.)

## Exhibit C. 4.

Annual report of Metropolitan S. S. Co. of New Jersey filed December 17, 1910. (See Schedule D. annexed to bill of complaint.)

## Exhibit C. 5.

Letter, February 18, 1910, Metropolitan S. S. Co. of New Jersey to American Trust Company, resolution, etc., *in re* release of freight boats.

February 18th, 1910.

American Trust Company, Trustee,
Under Mortgage from the Metropolitan Steamship Company to the American Trust Company, dated November 15th, 1909.
53 State Street, Boston, Mass.

GENTLEMEN:—

We hand you herewith certified copy of a resolution passed by the Directors of this Company, relative to the sale of the freight vessels, together with a certificate sworn to by a majority of the Board of Directors, all of which are self explanatory and in conformity with the Deed of Trust.

*Exhibit C. 5.*

In this connection, we may state that the Board of Directors of the Hudson Navigation Company have, by resolution, approved the sale of these boats at the price mentioned in the offer and that the Assets Realization Company, who are also large holders of the bonds, have agreed likewise to the sale on these terms.

You will note from the offer that time is of consequence, and we ask you to prepare and execute the release promptly, in accordance with the terms of the Trust Deed. If you will advise us when this release will be ready, we will be prepared to turn over to you the proceeds of the sale.

The result of the operation of these freight vessels shows a heavy monthly loss and under present conditions there does not seem any material prospect of change for the better, while on the other hand the operation of the Yale and Harvard has always resulted in a very handsome profit.

You will appreciate the difficulty of disposing of vessels of this character, and it is important no delay should occur here that will cause us to lose this opportunity of disposing of these vessels at what we deem an advantageous price.

Another reason for the prompt disposal of these vessels is the fact that, whilst we have a pier to accommodate the passenger vessels, we have not yet been able to secure proper pier quarters for the freight vessels, and we will be obliged to vacate within the next week Pier 58, which we are now occupying temporarily, and if this sale does not go through such failure may result in a very serious additional loss in operating the boats.

*Exhibit C. 5.*

If any further information is desired by you or if there is anything further that you wish us to do in this connection, please advise us promptly and we will lose no time on our part in complying with your wishes.

Yours very truly,

(Signed) METROPOLITAN STEAMSHIP COMPANY,

By John W. McKinnon,
*President.*

"The following resolution was duly made and seconded and carried unanimously:

Whereas, the following proposition has been made to this Company for the purchase of its freight steamers—

'New York, February 16th, 1910.

Metropolitan Steamship Company,
25 Broad Street,
New York City

Gentlemen:—

On behalf of clients, we are authorized to offer $650,000., for the following steamers owned by you, to-wit:

The vessel called the H. M. Whitney
" " " " H. F. Dimock
" " " " James S. Whitney
" " " " Herman Winter
" " " " James Anderson
" " " " William S. McGowan
" " " " N. Hayden
" " " " C. H. Prior
" " " " J. W. Walker
The vessel used as a car float and called the Eastern
The vessel used as a car float and called the Western

*Exhibit C. 5.*

This offer to remain open ten days from the date thereof; payment to be made upon conveyance of an unincumbered title to these steamers within said time limit.

We reserve the right to pay said sum to you either in cash or in first mortgage bonds of your company at par flat at our option.

Very truly yours,

WING & RUSSELL,

; and

WHEREAS, the said freight vessels have been operated at a loss, and in the judgment of this Board their continued operation will involve constant loss; and

WHEREAS, the remaining vessels of the line, to-wit, the Yale and Harvard, have been run profitably, and it is the purpose and intent of this company to retain the said Yale and Harvard, and maintain the passenger service carried on by said vessels between the ports of New York and Boston as heretofore; and

WHEREAS, in the judgment of this Board of Directors it is desirable, in the proper and judicious management and maintenance of the business of this company, to sell the said vessels at said price of Six Hundred Fifty Thousand Dollars ($650,000.); and

WHEREAS, in the judgment of the Directors of this company the said price of Six Hundred Fifty Thousand Dollars ($650,000.), is fair and represents the true value of said property.

NOW, THEREFORE BE IT RESOLVED, that the said proposition for the purchase of said steamers be accepted, and that the proper officers of this corporation are authorized in the name and behalf of this company to formally accept said

*Exhibit C. 5.*

offer, and to take such steps as may be necessary or proper in order to secure a release by the Trustee of this company's First Mortgage on said steamers from the encumbrance and trusts of said Mortgage, and to do such other acts and things as may in their judgment be necessary or proper in order to carry into effect the intent of this resolution."

I hereby certify that the above is a true extract from the minutes of a Special Meeting of the Board of Directors of the METROPOLITAN STEAMSHIP COMPANY (of New Jersey), duly held on the 18th day of February, 1910.

(Signed) CAMPBELL CARRINGTON,
*Secretary of the Metropolitan Steamship Company.*

The undersigned, a majority of the Directors of Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, being duly sworn, hereby certify that in their judgment it is desirable in the proper and judicious management and maintenance of the business of said Company to sell for Six Hundred Fifty Thousand Dollars ($650,000.), the vessels named as follows: H. M. Whitney, H. F. Dimock, James S. Whitney, Herman Winter, James Anderson, William S. McGowan, N. Hayden, C. H. Prior, J. W. Walker, Eastern and Western; and the undersigned further certify that in their judgment said price for which said property is thus sold is fair and represents the true value of said property.

*Exhibit C. 6.*

IN WITNESS WHEREOF we have severally hereunto set our hands on this 18th day of February, 1910.

Signed GEORGE E. SHAW
Signed JOHN W. McKINNON.

COUNTY OF NEW YORK, } ss:
COUNTY OF NEW YORK, }

On the 18th day of February in the year 1910, before me personally came George E. Shaw and John W. McKinnon to me personally known, who, being by me duly and severally sworn, did depose and say, that they are a majority of the directors of Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, and that the foregoing statements are true.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my personal seal the day and year first above written.

Signed MARTHA C. LONGENDYKE,
*Notary Public, N. Y. Co.*

(My commission expires March 30, 1911.)

## Exhibit C. 6.

Agreement between Assets Realization Company and Nicholson dated March 4, 1910.

ASSETS REALIZATION COMPANY, a corporation organized and existing under the laws of the State of New Jersey, hereby sells to Douglas Nicholson for One Million Four Hundred Thousand Dollars ($1,400,000) fourteen thousand three hundred twenty-three (14,323) shares of the capital stock of the Metropolitan

*Exhibit C. 6.*

Steamship Company, a corporation organized and existing under the laws of the State of New Jersey; ten-year non-interest-bearing gold notes of said Metropolitan Steamship Company, payable to bearer, of the face value of Four Hundred Forty nine Thousand Thirty five and 90/100 Dollars ($449,035.90); two-year notes of the said Metropolitan Steamship Company of the face value of Five Hundred Thousand Dollars; Five Hundred and Fifty-three (553) first mortgage five per cent sinking fund gold bonds of the said Metropolitan Steamship Company for $1,000. each; and demand notes of the face value of Three Hundred Seventy five Thousand Nine Hundred Twenty three and 14/100 Dollars ($375,923.14); being all the obligations, evidences of indebtedness and securities of said Metropolitan Steamship Company in which said Metropolitan Steamship Company in which said Assets Realization Company has any legal or equitable interest, it being understood that this has no reference to the present holding of such securities by the Hudson Navigation Company in its own right.

And said Assets Realization Company covenants and agrees to deliver all said securities to the said Douglas Nicholson or to his assigns, at any time upon his demand on or before March 8, 1910, at its office, 25 Broad Street, New York City, and also as part of this transaction to cause to be sold for One Hundred Thousand Dollars ($100,000) and delivered to the said Douglas Nicholson or to his assigns the following other securities, to wit: fifty (50) shares of the capital stock of the said Metropolitan Steamship Company; ten year non-interest-bearing gold notes of the said Metropolitan Steamship

*Exhibit C. 6.*

Company payable to bearer, of the face value of Two Hundred Thirty four Thousand Eight Hundred Fifty nine and 31/100 Dollars ($234,-859.31); and one hundred (100) of the first mortgage five per cent. sinking fund gold bonds of the said Metropolitan Steamship Company of one thousand dollars each.

And the said Douglas Nicholson hereby covenants and agrees to pay to said Assets Realization Company, at its office, 25 Broad Street, New York City, on or before March 8, 1910, at the time of the delivery of said securities, and as the full purchase price therefor, the said sum of One Million Four Hundred Thousand Dollars ($1,400,000) and One Hundred Thousand Dollars ($100,000).

The basis of this sale is a guaranty by the Assets Realization Company that the total outstanding capital stock of the Metropolitan Steamship Company consists of fifteen thousand shares of the par value of one hundred dollars each; that said Metropolitan Steamship Company has no outstanding evidences of indebtedness except its first mortgage five per cent. sinking fund gold bonds of the par value of Three Million Dollars ($3,000,000), its two-year six per cent, notes for the principal sum of Five Hundred Thousand Dollars ($500,000), its notes due December 15, 1911, without interest, for the principal sum of Thirty Thousand Dollars ($30,000), its notes due September 24, 1912, without interest, for the principal sum of Thirty Thousand Dollars ($30,-000), and its ten-year non-interest-bearing gold notes, payable to bearer, for the principal sum of One Million Four Hundred Twenty seven Thousand Two Hundred Ninety one and 78/100 ($1,427,291.78), and demand notes for the princi-

*Exhibit C. 6.*

pal sum of Three Hundred Seventy five Thousand Nine Hundred Twenty three and 14/100 Dollars ($375,923.14); the further guaranty of the Assets Realization Company that the Metropolitan Steamship Company owns at the time of this sale and will own at the time of the delivery of the securities sold all the property described in the mortgage of the Metropolitan Steamship Company, a corporation of New Jersey, to American Trust Company, dated November 15, 1909, and that this property includes and will then include the lease of India Wharf in Boston, Massachusetts, therein described, and that this property also includes and will include all the property received by the Metropolitan Steamship Company, a corporation of New Jersey, from the Receivers of the Metropolitan Steamship Company, a corporation organized prior to the current year under the laws of the State of Maine, and also all property received by the Metropolitan Steamship Company, a corporation of New Jersey, from the Receivers of the Metropolitan Steamship Company, a Maine corporation, organized prior to 1910, under the offer and proposition of December 28, 1909, by said Metropolitan Steamship Company, a corporation of New Jersey, to the said Receivers and by them accepted (the said offer and proposition being set forth in the minutes of the meeting of the directors of said Metropolitan Steamship Company, a corporation of New Jersey, held on December 28, 1909, in New York); and all the property shown upon the balance sheet as of January 31, 1910, of Metropolitan Steamship Company and upon the accompanying statement, prepared by Barrow, Wade, Guthrie & Company, accountants, which is hereto annexed and made a part of this agreement, subject only to such changes as have

*Exhibit C. 6.*

occurred or may occur in the ordinary and usual operations of the routine steamship business of said Metropolitan Steamship Company since said date, including the liquidation of a large part of the accounts payable disclosed by said balance sheet, except that all the steamers of the Company other than the "Yale" and "Harvard", have been sold and that the Union Wharf property in Boston, Massachusetts, has also been sold, and that the equity in the Fernald note and the claim against Mercantile National Bank have been converted into cash; and the further guaranty of the Assets Realization Company that the balance sheet hereinbefore mentioned is a full and correct statement of the property and affairs of said Metropolitan Steamship Company, a corporation of New Jersey, as of the date thereof, and that it has since been modified only by an agreement between the Assets Realization Company and Metropolitan Steamship Company, dated March 4, 1910, a copy of which is hereto annexed, and by the changes and sales above fully described, it being also understood that Metropolitan Steamship Company has received Two Thousand One Hundred and Twenty three and 9/100 Dollars ($2,123.09) from insurance companies on account of an accident to the "Yale", which sum may not as yet have been fully expended.

And Assets Realization Company hereby, for itself and its successors, also guarantees to the said Douglas Nicholson and his assigns that there will be at the time of the delivery of said securities to Douglas Nicholson or his assigns, and his or their payment therefor, no liens upon any property of the Metropolitan Steamship Company except a mortgage for Five Hundred

*Exhibit C. 6.*

Thousand Dollars on Union Wharf property in Boston, Massachusetts, and except the first mortgage of the Metropolitan Steamship Company to American Trust Company, dated November 15, 1909; and also that said Metropolitan Steamship Company at the time of the delivery of said securities and the payment therefor will have no liabilities, liquidated or unliquidated, immediate or contingent, except on the bonds, mortgages and notes hereinabove described as outstanding obligations of the Company, and except on such accounts payable described in schedules 11 and 12 attached to said Barrow, Wade, Guthrie & Company's balance sheet of Metropolitan Steamship Company hereto annexed, as have not since been paid, and except passenger tickets sold and not yet presenting costing One Thousand Nine Hundred Twenty two and 27/100 Dollars ($1,92227), and except such claims as may exist against said Metropolitan Steamship Company, a corporation of New Jersey, or the Receivers of the said Metropolitan Steamship Company, a corporation of Maine, for loss and damage to freight carried by said company or said receivers and except liabilities of said company or said receivers for loss or damage to vessels or cargo or persons arising out of accidents and fully covered by insurance in favor of the Company or said Receivers, but subject to a collection charge of one per cent. upon sums received from foreign insurers, and except such operating expenses, charges, or claims as may have arisen subsequently to January 31, 1910, in the ordinary routine steamship business of the Metropolitan Steamship Company, and excepting obligations under leases described in schedule 17 attached to said Barrow, Wade, Guthrie & Com-

*Exhibit C. 6.*

pany's report annexed hereto, and under the lease for two years of Pier 16, East River, New York City, at a rental of $25,500.00 per annum, and except a covenant of said Metropolitan Steamship Company, a corporation of New Jersey, with John W. McKinnon, a copy of which is hereto annexed.

And said Assets Realization Company hereby, for itself and its successors, also covenants with the said Douglas Nicholson and his assigns as purchasers of said stock and obligations of said Metropolitan Steamship Company, a corporation of New Jersey, that it, said Assets Realization Company, will warrant and defend the title of said Metropolitan Steamship Company to all of said property above guaranteed to belong to it, against all claims and demands whatsoever, except under said mortgage of Five Hundred Thousand Dollars on the Union Wharf property and under said first mortgage of Metropolitan Steamship Company to American Trust Company; and also that it, said Assets Realization Company, will defend said Metropolitan Steamship Company against and save it harmless from all loss, cost or damage arising directly or indirectly out of any claims against said company other than those above excepted from the guaranty by the said Assets Realization Company against liabilities of Metropolitan Steamship Company, provided that this warranty shall not include any claims or obligations arising out of anything done or omitted by said Metropolitan Steamship Company, a corporation of New Jersey, subsequent to the delivery of the securities under this agreement.

And said Assets Realization Company further covenants for itself and its successors with said

*Exhibit C. 6.*

Douglas Nicholson and his assigns that there are no liens or incumbrances of any nature upon any of the securities hereinabove described as sold to said Douglas Nicholson under this agreement, and that it will warrant and defend the title of said Douglas Nicholson to the same against all claims and demands whatsoever.

Assets Realization Company further covenants for itself and its successors with Douglas Nicholson and his assigns that the minute book of said Metropolitan Steamship Company, a corporation of New Jersey, contains a full and true record of all the corporate doings of the stockholders, directors and executive committee or other committees of the Board of Directors, and that no action of any nature whatsoever will be taken by the directors or stockholders of said Metropolitan Steamship Company, a corporation of New Jersey, prior to the delivery of said securities so held and the payment therefor, except as may be approved in writing by the said Douglas Nicholson or his assigns.

Since the stock of said Metropolitan Steamship Company, a corporation of New Jersey, herein agreed to be sold to Douglas Nicholson or his assigns by Assets Realization Company includes the shares of stock in said Metropolitan Steamship Company held by the present directors thereof, and after such sale such directors will have no personal interest in the results of the management of said Metropolitan Steamship Company, Assets Realization Company further covenants for itself and its successors with Douglas Nicholson and his assigns, that said directors will after said sale take no action in the name or behalf of said Metropolitan Steamship Company without first ob-

*Exhibit C. 6.*

taining the written approval of Douglas Nicholson or his assigns, as the owner of nearly all the capital stock of said Company and that said directors will at the time of or at any time after the payment for the securities sold hereundertake all such steps as may be demanded by said Douglas Nicholson or his assigns, which are legal and proper for the purpose of securing the replacing of said directors by other directors acceptable to a majority of the stockholders of said Metropolitan Steamship Company.

Time is of the essence of this agreement.

In Witness Whereof, Assets Realization Company, by George E. Shaw, its President, thereunto duly authorized by vote of its Board of Directors, has caused these presents to be executed and its seal to be hereto affixed, and Douglas Nicholson has hereunto set his hand and seal on this 4th day of March, 1910.

ASSETS REALIZATION COMPANY,

[seal.] By George E. Shaw,
*its President.*

Attest: E. B. Wire, *Asst. Secy.*

Douglas Nicholson.

Witnesses:
Stephen Demmon
E. D. Shotwell.

*Exhibits C. 7, C. 8.*

## Exhibit C. 7.

Receipt, Nicholson, Treasurer, to Carrington, dated March 5, 1910.

March 5, 1910.

RECEIVED of CAMPBELL CARRINGTON the following:

1. Release of American Trust Company releasing freight boats of the Metropolitan Steamship Company.
2. Executed original Agreement between Edward T. Canfield and Metropolitan Steamship Company.
3. Original executed Agreement between Metropolitan Steamship Company and Assets Realization Company, dated March 4th, 1910.
4. Original executed Release of John W. McKinnon in respect to India Wharf.
5. Duplicate Deposit Slip Chase National Bank covering deposit of $266,387.13.
6. Minute Books of Stockholders and Directors' meetings and corporate stal.

METROPOLITAN STEAMSHIP COMPANY,

By Douglas Nicholson,
*Treasurer.*

## Exhibit C. 8.

Option, Hudson Navigation Company to Edward T. Canfield, dated March 4, 1910.

HUDSON NAVIGATION COMPANY, a corporation of the State of.....in consideration of the sum of Ten Dollars, to it paid by Edward T. Canfield, the receipt of which is hereby acknowledged, does hereby give to the said Edward T. Canfield or his assigns

*Exhibit C. 8.*

the right to purchase from it upon demand on or before March 8th, 1910, three hundred and forty-seven (347) of the first mortgage five per cent. sinking fund gold bonds, of the par value of one thousand dollars each, of Metropolitan Steamship Company, a corporation of New Jersey, now owned and held by it, said Hudson Navigation Company, at and for the price of Eight Hundred Dollars ($800) and interest accrued on said bonds from January 1, 1910, for each and every one of such bonds, and to deliver the same to the said Edward T. Canfield or his assigns free of all liens, encumbrances or claims of any nature, upon the demand of the said Canfield or his assigns and the payment of such stated price; the intention being to give to the said Edward T. Canfield or his assigns a definite and exclusive right to purchase specific bonds of said Metropolitan Steamship Company, a corporation of New Jersey, now owned and held by Hudson Navigation Company.

In Witness Whereof Hudson Navigation Company by John W. McKinnon, its President, thereunto duly authorized, has caused these presents to be executed and its corporate seal to be hereto affixed, on this 4th day of March, 1910.

HUDSON NAVIGATION COMPANY,

(Corporate seal.)

By J. W. McKinnon,
*its President.*

Campbell Carrington, *Secretary.*

*Exhibits C. 9, C. 10.*

## Exhibit C. 9.

Receipt, Hudson Navigation Company to Edward T. Canfield.

RECEIVED of Edward T. Canfield, as the full purchase price for three hundred forty-seven (347) first mortgage 5% gold bonds of the Metropolitan Steamship Company, Two Hundred Eighty Thousand Six Hundred Eighty-four and 45/100 Dollars ($280,684.45), of which we have delivered to the said Canfield three hundred forty-six (346) bonds and we hereby promise to deliver one (1) bond on or before March 8th, 1910, by mailing it to the Second National Bank of New Haven, Connecticut, for the said Canfield.

HUDSON NAVIGATION CO.

J. W. McKINNON,
*Prest.*

## Exhibit C. 10.

Letter amending re-organization plan, September 24, 1909.

(Letterhead of Assets Realization Co.)

New York City, September 24th, 1909.

Messrs. Philip Stockton, Henry D. Tudor and Thomas D. Adams, Committee of Creditors of the Metropolitan Steamship Company, C/o City Trust Company, Boston, Mass.

Gentlemen:—

*Re Metropolitan Steamship Company Reorganization.*

Under the plan and agreements of reorganization of Metropolitan Steamship Company, dated May 1st, 1909, it is provided that the Reorganiza-

*Exhibit C. 10.*

tion Managers shall deliver to the unsecured creditors of Metropolitan Steamship Company who may assent to the plan of reorganization such as amount of the stock of the new Company, referred to in said plan and agreements of reorganization, as shall be equal in face value to the face value of the notes of and claims against Metropolitan Steamship Company held by such creditors.

The Reorganization Managers have now decided, subject to the approval of such unsecured creditors who have heretofore assented to the plan of reorganization, to modify said plan by giving to such creditors, in place of stock of said new company, ten (10) year notes, which will be substantially of the form enclosed herein.

As no dividends can be paid upon the stock of the new company until these notes are provided for and paid, the modification suggested would seem to be a desirable one from the point of view of the unsecured creditors and the holders of a large majority of notes and unsecured claims have agreed to accept such notes in place of stock of the new company.

As the foreclosure sale of the property of the Metropolitan Steamship Company is set for October 8th, 1909, the Reorganization managers request that your committee give this matter your immediate attention.

Yours very truly,

For the Reorganization Managers
of the Metropolitan Steamship Co.

*Exhibit C. 11.*

## Exhibit C. 11.

Letter amending re-organization plan, September 30, 1909.

Sept. 30, 1909.

Messrs. George E. Shaw, Henry Hornblower, John W. McKinnon, Reorganization Managers, C/o Assets Realization Company, 25 Broad Street, New York, N. Y.

Gentlemen:—

*Re Metropolitan Steamship Company Reorganization.*

Replying to your letter of September 24th, the undersigned on behalf of the committee of creditors of the Metropolitan Steamship Company, hereby accept the change in the plan of reorganiation as set forth in your letter, and we will consider that the Plan and Agreements of Reorganization dated May 1st, 1909, between the Committee of Creditors, the Committee of Bondholders and the Reorganization Managers, shall be amended in accordance with your letter, so that in lieu of creditors taking stock in said new company for the face value of their claim, they are to receive ten (10) year notes for the face value of their claim without interest, in which it is provided that until said obligations are fully liquidated, no dividends shall be paid to stockholders.

PHILIP STOCKTON,
HENRY D. TUDOR,
*For the Committee of Creditors.*

*Exhibits C. 12, C. 13.*

## Exhibit C. 12.

Letter, Second National Bank of New Haven to Assets Realization Company, March 15, 1910.

THE SECOND NATIONAL BANK.

New Haven, Conn., March 15th, 1910.

Assets Realization Company,
25 Broad Street,
New York, N. Y.

Gentlemen:—

We hold receipt, under date of March 5th, of the HUDSON NAVIGATION COMPANY, for sundry bonds of the Metropolitan Steamship Company, which states that the delivery was short one bond, which would be forwarded to us by March 8th. We have not received the bond. Will you please give the matter your attention, and advise us.

Very truly yours,

T. H. Sheldon, A. Cas.

Received
Mar 16 1910
Answered by

## Exhibit C. 13.

Letter, Assets Realization Company to Second National Bank of New Haven, March 16, 1910.

March 16, 1910.

*Register and Insure.*

Second National Bank,
New Haven, Conn.

Gentlemen:—

I beg to acknowledge receipt of yours of the 15th inst. stating that you hold receipt of the Hudson Navigation Company under date of

*Exhibit C. 14.*

March 5th for sundry bonds of the Metropolitan Steamship Company, and that there is short one bond. I am, therefore, enclosing herewith Metropolitan Steamship Company bond #514 with coupon due July, 1910, and all subsequent coupons attached.

Kindly acknowledge receipt of same and return the receipt which you now hold of the Hudson Navigation Company.

Very truly yours,

CC/S *Vice-President.*

## Exhibit C. 14.

Letter, Second National Bank of New Haven to Assets Realization Company, March 18, 1910.

THE SECOND NATIONAL BANK.

New Haven, Conn., March 18th, 1910.

Campbell Carrington, Esq., Vice-President,
Assets Realization Company,
New York, N. Y.

Dear Sir:—

We are in receipt of your favor of the 16th instant, with bond #514 of the METROPOLITAN STEAMSHIP COMPANY, with coupon due July, 1910, and all subsequent coupons attached.

We enclose receipt of the Hudson Navigation Company, as requested, which included this bond.

Yours respectfully,

CHAS. A. SHELDON.

*Exhibits C. 15, C. 16.*

## Exhibit C. 15.

Certificate of Incorporation of Maine Co. (No. 2.). (See Schedule G. annexed to bill of complaint.)

## Exhibit C. 16.

Account, N. Y., N. H. & H. R. R. Co. in Manhattan Company.

Dr. New York, New Haven & H. R. R. in account with Manhattan Company, New York, Cr.

Please examine and Report at your earliest Convenience.

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | 1910 | | |
| Feb. | 11 | To | 100. | Feb. | 8 | |
| | 19 | | 8,764.05 | | Balance, | 258,250. |
| | 23 | | 14,082.79 | | 9 | 320.39 |
| | | | 1,243,430.21 | | 10 | 467.25 |
| | | | | | 11 | 583.27 |
| | | | | | 14 | 921,71 |
| | | | | | Loan | 1,000,000. |
| | | | | | 15 | 688.80 |
| | | | | | 16 | 535.14 |
| | | | | | 17 | 418.18 |
| | | | | | 18 | 719.24 |
| | | | | | 19 | 552.88 |
| | | | | | 21 | 565.31 |
| | | | | | 23 | 423.72 |
| | | | | | 24 | 465.73 |
| | | | | | 25 | 568.58 |
| | | | | | 26 | 375.38 |
| | | | | | 28 | 341.47 |
| | | | 1,266,377.05 | | | 1,266,377.05 |
| | | | | Feb. | 28. | |
| | | | | | Balance, | 1,243,430.21 |

*Exhibits C. 17, C. 18.*

## Exhibit C. 17.

Deposit Slip, Metropolitan S. S. Co. in Manhattan Compan,y March 5, 1910.

DEPOSITED BY
METROPOLITAN STEAMSHIP CO.
IN
MANHATTAN COMPANY,

New York, Mar. 5, 1910.

| | Dollars Cents |
|---|---|
| Bills | |
| Specie | |
| Check | 200,000 |
| | 1,450,000 |
| | 1,650,000 |

New a/c
C/o BARROW, WADE & GUTHRIE
New York
Pass Book

## Exhibit C. 18.

Deposit Slip, Metropolitan S. S. Co. in Manhattan Company, March 5, 1910.

DEPOSITED BY
METROPOLITAN STEAMSHIP CO.
IN
MANHATTAN COMPANY,

New York, Mar. 5, 1910.

| | Dollars Cents |
|---|---|
| Bills | |
| Specie | |
| Check | 1,550,000 |

Pass Book issued
New a/c

*Exhibit C. 19.*

## Exhibit C. 19.

Cashier's check of Manhattan Company to Nicholson, March 5, 1910.

BANK OF THE MANHATTAN COMPANY
Chartered 1799

$1,400,000. New York, Mar. 5, 1910.

Pay to the order of Douglas Nicholson
One million, four hundred thousand Dollars.

PIERRE JAY, V. Pres. D. H. PIERSON, Cashier.

CANCELLED.

Endorsements:

Douglas Nicholson
Pay to the order of
Chase National Bank
Assets Realization Co.
E. B. WIRE,
Asst. Treas.

Received Payment
Through the New York Clearing House
Receiving Teller
March 5, 1910
Chase National Bank
New York
No. 74.

*Exhibit C. 20.*

## Exhibit C. 20.

Account, Metropolitan S. S. Co. of New Jersey in Manhattan Company.

Dr. Metropolitan Steamship Co. in account with Manhattan Company, New York, Cr.

Please examine and report at your earliest convenience.

| | | | | | |
|---|---|---|---|---|---|
| | | | 1910 | | |
| Mch. | 5 | T. 3,166,000.00 | Mch. | 5 | |
| | 12 | 2,200.00 | | By de- | |
| | 14 | 2,662.10 | | posit | 1,550,000.00 |
| | | 1,711.91 | | | 1,650,000.00 |
| | 15 | 122.00 | | 7 | 1,125.24 |
| | 15 | 77.85 | | 8 | 244.21 |
| | 16 | 5.00 | | 9 | 1,227.63 |
| | | 16.60 | | 10 | 1,447.59 |
| | | 11.05 | | 11 | 971.90 |
| | | 3.47 | | 12 | 798.25 |
| | | 1,741.63 | | 14 | 1,218.41 |
| | | 655.54 | | 15 | 391.12 |
| | | 3.50 | | 16 | 1,224.53 |
| | | 133.31 | | 17 | 1,100.55 |
| | | 251.15 | | 18 | 342.39 |
| | | 577.86 | | 19 | 1,240.18 |
| | | 127.29 | | 21 | 1,161.80 |
| | | 1,198.33 | | 22 | 238.66 |
| | 17 | 261.21 | | 24 | 223.18 |
| | | 11.21 | | 25 | 1,733.84 |
| | | 16.20 | | 26 | 1,877.02 |
| | 18 | 8.31 | | 28 | 3,355.50 |
| | | 18.62 | | 29 | 3,599.66 |
| | 19 | 16.25 | | 30 | 1,062.16 |
| | | 2,500.00 | | 31 | 7,352.52 |
| | 21 | 291.79 | Apl. | 1 | 2,208.15 |
| | | 1,000.00 | | | |

*Exhibit C. 20.*

| | | |
|---|---|---|
| Mch. | 22 | 335.80 |
| | | 323.17 |
| | | 8.49 |
| | | 65.07 |
| | | 9.48 |
| | | 348.02 |
| | | 13.58 |
| | | 2.00 |
| | | 625.00 |
| | | 1.25 |
| | 23 | 10.01 |
| | | 390.86 |
| | | 2.80 |
| | | 4.00 |
| | 26 | 6,000.00 |
| | 31 | 12.69 |
| | | 1,515.16 |
| | | 5,329.11 |
| Apl. | 1 | 5.50 |
| | | 819.02 |
| | | 1.80 |
| | | 64.50 |
| | | 20.20 |
| | | 1.40 |
| | | 22.03 |
| | | 175.12 |
| | | 1.90 |
| | | 137.27 |
| | | 36,277.08 |
| | | 3,197,867.41 |
| | | 3,197,867.41 |
| | | Apl. 21 Balance 36,277.08 |

*Exhibits C. 21, C. 22.*

## Exhibit C. 21.

Signature card, Maine Co. (No. 2) for Manhattan Company.

AUTHORIZED SIGNATURES OF
METROPOLITAN STEAMSHIP CO.
FOR THE MANHATTAN COMPANY.

2511

President
Vice-Pres't
Vice-Pres't
Signed GROVER C. RICHARDS Treasurer
Secretary

Date Mar. 5, 1910. Address C/o Barrow, Wade & Guthrie.

Introduced by Mr. Henning, Mr. Billard & Mr. E. D. Robbins, V. P. N. Y. N. H. & H. Rd.

## Exhibit C. 22.

Signature card, Maine Co. (No. 2) for Manhattan Company.

AUTHORIZED SIGNATURES OF
METROPOLITAN STEAMSHIP CO.
FOR THE MANHATTAN COMPANY.

President
Vice-Pres't
Vice-Pres't
Signed B. E. CASE Treasurer
Secretary

Date Mar. 14, 1910. Address Pier 27 E. R. on and after Mar 21 Pier 9 N. R.

Introduced by Mr. Henning, Mr. Billard and Mr. E. D. Robbins, V. P. N. Y. N. H. & H. Rd.

*Exhibit C. 23.*

## Exhibit C. 23.

Annual report, Maine Co. (No. 2) filed May 19, 1910.

Dec. 4, 1913.

STATE OF MAINE.

June 1, 1910.

To Hon. Cyrus W. Davis, Secretary of State,

In compliance with Section 26, Chapter 47, of the Revised Statutes of 1903, the PRESIDENT TREASURER of the Metropolitan Steamship

(Erase title not used)

Company makes the following return, under oath, of the names of its Directors, President, Treasurer and Clerk with the residence of each, the location of its principal office in this state and the amount of its authorized capital stock.

To be made on or Before June 1st of each year.

| Name of Directors. | Residence. |
|---|---|
| Calvin Austin | Boston, Mass. |
| B. E. Case | New York City. |
| James Dean | Boston, Mass. |
| Galen Stone | Boston, Mass. |
| Harold Williams, Jr. | Boston, Mass. |

(Give street and number)

President, Calvin Austin,
India Wharf, Boston, Mass.

Treasurer, B. E. Case
Pier 9, N. R. New York City.

Maine Clerk, Benjamin G. Ward,
No. 14 Orchard St., Portland, Me.

Principal office is located at Number———— Street in the City, Town of Bath in the County of Sagadahoc

(Erase words not used)

*Exhibit C. 24.*

Authorized capital stock, $3,000,000.00
(President or Treasurer) Calvin Austin,
( sign here ) President.

Suffolk, ss. Boston, May 18, 1910.
Then personally appeared Calvin Austin, President Treasurer (Erase title not used) of the Metropolitan Steamship Company and made oath to the foregoing certificate, that the same is true.
Before me, R. A. PEPPER,
*Notary Public.*
(L. S.)

Endorsed: Name of Corporation—Metropolitan Steamship Company. Principal Office, Bath. Maine.

SECRETARY OF STATE'S OFFICE.
Received and Filed
May 19, 1910,
Augusta, Me.

## Exhibit C. 24.

Annual report, Maine Co. (No. 2) filed September 30, 1911.

Dec. 4, 1913.

STATE OF MAINE.

September 29th, 1911.

To Hon. Cyrus W. Davis, Secretary of State,

In compliance with Section 26, Chapter 47, of the Revised Statutes of 1903, the President Treasurer of the Metropolitan Steamship Com-
(Erase title not used.)
pany makes the following return, under oath, of the names of its Directors, President, Treasurer and Clerk with the residence of each, the location of its principal office in this state and the amount of its authorized capital stock.

*Exhibit C. 24.*

To be made on or Before June 1st of each year.

| Names of Directors. | Residence. |
|---|---|
| Calvin Austin | Boston, Mass. |
| Galen L. Stone | Boston, Mass. |
| Harold Williams Jr. | Boston, Mass. |
| James Dean | Boston, Mass. |
| Birdsey E. Case | Hartford, Conn. |

(Give street and number.)

President, Calvin Austin
Boston, Mass. (Foster's Wharf.)
Treasurer, Birdsey E. Case,
Boston, Mass. (India Wharf.)
Maine Clerk, Benjamin G. Ward
Portland, Me. (1st Nat'l Bank Bldg.)

Principal office is located at Number ——— Street in the City, Town of Bath in the County of Sagadahoc.

(Erase words not used.)

Authorized Capital Stock ..... $3,000,000.00

(President or treasurer)
( sign here ) Birdsey E. Case.

Suffolk, ss.

Then personally appeared Birdsey E. Case, treasurer of the Metropolitan Steamship Company and made oath to the foregoing certificate, that the same is true.

Before me, R. A. PEPPER,
(L.S.) *Notary Public.*

Endorsed Name of Corporation
Metropolitan Steamship Company
Principal Office
Bath, Maine.
SECRETARY OF STATE'S OFFICE.
Received and Filed
Sep 30 1911
Augusta, Me.

*Exhibit C. 25.*

## Exhibit C. 25.

Certification slip, Manhattan Company, March 5, 1910.

Dec 12 1913

Buchlin charge Metropolitan
Steamship Co.
3 checks certified Mar 5/1910
$1,600,000
after proof posted 1,400,000
General Ledger 166,000 $3,166,000.00
D. H. P. Cas.

CREDIT CERTIFICATION ACCOUNT
MANHATTAN COMPANY
March 5/1910

## Exhibit C. 25.

Machine list National City Bank, March 7, 1910.

For Loan & Trust Co. Genl. 3/7/10.

| | |
|---|---|
| 41.470.83 | 308.32 |
| 58,649.10 | 522.00 |
| 884.33 | 1,181.77 |
| 38,653.38 | 29,540.87 |
| 18,938.50 | 48,735.00 |
| 48,382.70 | 7,530.35 |
| 948.81 | 380.51 |
| 560.56 | 13.00 |
| 440.78 | 8.269.79 |
| 156.57 | 1.25 |
| 19,488.00 | 30.00 |
| 1,105.95 | 13,964.52 |
| 934.11 | 3,645.93 |
| 412.74 | 2,392.54 |
| 5,300.00 | 6,346.06 |
| 2,496.60 | 5,968.95 |

| | |
|---|---|
| 3.00 | 121,837.50 |
| 4,458.52 | 11,062.32 |
| 407.83 | 3,268.05 |
| 1,377.90 | 48,735.00 |
| 915.14 | 2,119.52 |
| 811.59 | 1,237.85 |
| 41,042.78 | 1,516.71 |
| 1,550,000.00 | 3,126.07 |
| 35,608.45 | |
| 3,061.15 | 2,198,143.20 |

## Exhibit C. 26.

Telegram, Campbell to McGovern, May 27, 1909. (Printed on page 618 of record.)

## Exhibit C. 27.

Letter, Campbell to McGovern, October 24, 1908. (Printed on page 620 of record.)

## Exhibit C. 28.

Offer, McGovern to McKinnon. (Printed on page 633 of record.)

## Exhibit C. 29.

Letter, McGovern to Robbins, January 19, 1910. (Printed on page 636 of record.)

## Exhibit C. 30.

Letter, McGovern to Robbins, January 19, 1910. (Printed on page 637 of record.)

## Exhibit C. 31.

Letter, Robbins to McGovern, January 20, 1910. (Printed on page 641 of record.)

## Exhibit C. 32.

Letter, Robbins to McGovern, April 2, 1910. (Printed on page 643 of record.)

## Exhibit C. 33.

Certificate of Incorporation, Pacific Navigation Co. (See Schedule H. annexed to bill of complaint.)

## Exhibit C. 34.

Operating agreement between Metropolitan S. S. Co. of New Jersey and Pacific Navigation Company, dated October 10, 1910.

THIS INDENTURE dated the tenth day of October, one thousand nine hundred and ten, by and between METROPOLITAN STEAMSHIP COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, (hereinafter termed the "Steamship Company") party of the first part. and PACIFIC NAVIGATION COMPANY. also a corporation duly organized and existing under the laws of the State of New Jersey, (hereinafter termed the "Navigation Company") party of the second part:

WHEREAS Metropolitan Steamship Company is owner of the Steamship "Yale" and "Harvard,"

*Exhibit C. 34.*

a copy of the certificate of enrollment of each of said steamships being annexed to this indenture and made a part thereof as Schedules "A" and "B" respectively, which steamships have heretofore been operated between the ports of New York and Boston; and

WHEREAS the Navigation Company has proposed to the Steamship Company to act as agent for the Steamship Company in operating said steamships on the Pacific Coast of the United States, and as an inducement for the transfer of said steamships to the Pacific Coast at a large expense to the Steamship Company. has offered to guarantee to the Steamship Company a net return from such operation and to protect it in other ways hereinafter set forth:

NOW, THEREFORE, Metropolitan Steamship Company hereby agrees with Pacific Navigation Company to start the said steamships for the Pacific Coast as soon as they can reasonably be made ready for the voyage, and to cause them to be navigated to the port of San Pedro in the State of California, at the expense of the Steamship Company.

Upon the arrival of said steamships at said port of San Pedro (which is expected to be about the first day of December, 1910) it is mutually agreed that said steamships shall be operated between the California ports of San Francisco and San Diego and / or intermediate ports or such other ports on the Pacific Coast of North America neither south of San Diego, California, nor north of Vancouver, British Columbia, as may be agreed upon between the parties hereto in the manner hereinafter provided.

It is further mutually agreed between the parties hereto that for the term of five years com-

*Exhibit C. 34.*

mencing with the arrival of said steamships at said port of San Pedro, Pacific Navigation Company is employed to and will operate each of said steamships and said steamship line as sole agent of the Metropolitan Steamship Company, upon the terms and subject to the covenants, conditions and agreements hereinafter set forth.

1. Pacific Navigation Company covenants and agrees with Metropolitan Steamship Company to furnish all the working capital necessary for the care, repair, maintenance and operation of said steamships from and after their arrival at the port of San Pedro, until the end of said term of five years. The Navigation Company further covenants and agrees at all times with said working capital thus furnished and the earnings of the business to maintain, preserve and keep each of said steamships and all the property of the Steamship Company located thereon or appurtenant thereto in thorough working order and repair, and make all needful and proper repairs, renewals, replacements, additions and changes of every nature, so that the traffic and business of the Steamship Company to be conducted as its agent by the Navigation Company with said steamships shall at all times be conducted with safety and expedition; also at all times to keep the said described property and all parts thereof supplied with all necessary equipment, and also to conduct said business and operate said steamship line in an efficient manner.

2. The Navigation Company agrees to furnish at its own expense sufficient terminal facilities, including wharfage rights at all ports at which such steamships are to touch in the course of their operation as above set forth, and at its own ex-

pense to procure proper offices suitable for all purposes incident to such operation of said steamships, including well-located ticket offices in the cities of San Francisco and Los Angeles in the State of California.

3. The Navigation Company guarantees to the Steamship Company that the net earnings of the Steamship Company from each of said steamships during the first twelve months of said term shall be Fourteen Thousand, Three Hundred and Seventy-five Dollars ($14,375) per month, and thereafter during the remainder of said term Sixteen Thousand, Four Hundred and Fifty-eight and 34/100 Dollars ($16,458.34) per month, and as partial security to the Steamship Company for the performance of this guaranty, covenants and agrees to pay said amounts thus guaranteed to the Steamship Company, in advance at the beginning of each month during said term, the first payment to be made at San Pedro upon the arrival of each steamship at said port, and subsequent payments to be made to such persons or corporation at such place in the city of New York in New York or the city of Boston in Massachusetts, as from time to time shall be designated in writing to the Navigation Company by the Steamship Company.

4. The Navigation Company, as one of the considerations for the execution of this indenture, also agrees promptly to pay to the Steamship Company the cost to the Steamship Company of all ships' stores and provisions upon said steamships or either of them upon their arrival at San Pedro, and the amount realized from the sale of evaperators and other property on or appurtenant to said ships which may no longer be necessary for the operation of said ships.

*Exhibit C. 34.*

5. The Navigation Company covenants and agrees at all times to comply with and obey all laws and governmental ordinances and regulations affecting the maintenance or operation of said steamships.

6. The Navigation Company covenants and agrees that it will do no act and make no omission involving a violation in any respect of any of the terms, conditions and covenants of the first mortgage of Metropolitan Steamship Company to American Trust Company, dated November 15, 1909, or of the second mortgage of Metropolitan Steamship Company to Alfred C. Greening, trustee, dated October 10, 1910.

7. The Navigation Company covenants and agrees that it will not through any act or omission or neglect on its part cause or suffer any lien to be created upon either of said steamships.

8. It is expressly understood and agreed between the parties hereto that the Navigation Company shall have no authority to make any contract in the name or behalf of the Steamship Company nor in the name or behalf of the Navigation Company as agent of the Steamship Company without the written consent of the Steamship Company, except for the wages of those necessarily employed upon said steamships in the course of the proper operation thereof and for supplies necessarily purchased for said steamships, and for the necessary repairs to said steamships, and that none of these contracts shall without such written consent be so made unless they are to be fully performed within one month from the date thereof; but nothing herein contained shall prevent the Pacific Navigation Company from making on its own behalf any contracts and expenditures in connection with the business of the Steamship Company not binding

*Exhibit C. 34.*

upon the Steamship Company which the Navigation Company shall find to be for its own interest, provided, however, that the Navigation Company expressly covenants and agrees that it will not incur or cause or permit to be incurred any debts or liabilities, immediate or future, definite or contingent, in connection with either or both of said steamships or the maintenance, operation or care thereof, or of any other character, such as might under any conditions result in the creation of a lien on said steamships or either of them, exceeding at any one time the aggregate amount of Fifty Thousand Dollars. On or before the fifteenth calendar day of each month of said term after the calendar month in which said term commences, the Navigation Company shall deliver to the Steamship Company at such address as shall from time be indicated by the Steamship Company to the Navigation Company, a statement of the Navigation Company, sworn to by its President and Treasurer, showing fully and in detail the nature and amount of all debts and liabilities incurred or caused or permitted to be incurred by the Navigation Company, whether immediate or future, definite or contingent, as those existed at the end of the preceding calendar month. Within thirty days after the termination of each year of said term, the Navigation Company shall in the same way furnish to the Steamship Company a full, detailed statement of all such debts and liabilities existing at the close of said year, certified to by a chartered accountant in good standing.

9. It is mutually understood between the parties hereto that a prime condition of the execution of this indenture by the Steamship Company is the assurance to the Steamship Company, of

*Exhibit C. 34.*

the financial responsibility of the Navigation Company, and the Navigation Company expressly covenants and agrees that before the commencement of said term of five years there shall have been in good faith paid into its treasury upon subscriptions to its capital stock at least Two Hundred and Fifty Thousand Dollars in cash, and that at the commencement of said term it will have as a working capital, over and above all its debts, liabilities and investments and in cash in its treasury, at least One Hundred Thousand Dollars, and that at the time of the arrival of said steamships "Yale" and "Harvard" at the said port of San Pedro, the Navigation Company will furnish to the Steamship Company a statement of its financial condition at that time, sworn to by its President and Treasurer, and certified to by a chartered accountant in good standing, showing to the satisfaction of the Steamship Company that the above covenant contained in this paragraph has been strictly kept and performed.

10. The Navigation Company further covenants and agrees that without the written consent of the Steamship Company it will not during said term directly or indirectly engage in any other business than that provided for in this indenture, and that none of its funds or other assets will be so used directly or indirectly, without like consent, and that it will not pay dividends except out of its own actual net earnings, and further that it will not without the written consent of the Steamship Company pay dividends in any calendar year exceeding half of its own actual net earnings for such year, unless in every case after such payment the Navigation Company shall have left in its treasury after deducting

*Exhibit C. 34.*

all bad or doubtful assets and all liabilities, an amount of at least One Hundred and Fifty Thousand Dollars, in cash or in good liquid assets and actually available for use as needed as working capital in the business provided for in this indenture; and that within thirty days after the end of each year of said term it will furnish to the Steamship Company at such address as from time to time the Steamship Company shall indicate to the Navigation Company, a statement of the acts and transactions of the Navigation Company during such year, sworn to by the President and Treasurer of the Navigation Company and certified to by a chartered accountant in good standing, sufficient to show to the satisfaction of the Steamship Company that the covenant above in this paragraph contained has been fully kept and performed.

11. The Navigation Company covenants and agrees that if during said term, without actual personal fault of the Steamship Company itself, any suit *in rem* shall be brought against either of said steamships "Yale" or "Harvard," unless the demand of said suit shall be covered by policies of insurance taken out by the Steamship Company, the Navigation Company will within ten days after the bringing of such suit either secure the withdrawal of such suit at its own expense or will deliver to the Steamship Company its bond executed to the Steamship Company, with good and sufficient surety, conditioned on the payment by the Navigation Company of any judgment demanded or prayed for in such suit, which bond shall be for an amount of money equal to one and one-half times the amount of the demand in said suit.

12. The Navigation Company also covenants and agrees that at the end of said term or sooner

*Exhibit C. 34.*

termination of the agency herein provided for, each of said steamships shall be in as good condition as it now is, except for such deterioration of the hull, boilers and machinery and other permanent parts of said steamships as will necessarily arise from the lapse of time and ordinary proper use thereof, and as cannot be prevented or remedied by current or occasional reasonable repairs, renewals, replacements, additions or changes, and except also for such damages to said property as shall then be fully covered by insurance taken out by the Steamship Company.

13. The parties hereto mutually covenant and agree that the character and value of certain perishable parts belonging to said steamships are correctly shown on an inventory hereto attached as Schedule "C," and the Navigation company covenants and agrees that at the end of said term or sooner termination of the agency herein provided for, each of said ships, except in case of the total loss of said ship, shall have on board as property of the Steamship Company similar articles whch shall then be of an aggregate value equal to that shown upon said inventory, Schedule "C."

14. The Steamship Company covenants and agrees that it will at its own expense and not as a part of the cost of the operation of said steamships as intended by this indenture, comply during said term with the provisions of its first mortgage to American Trust Company regarding insurance of said steamships, and that the Navigation Company shall be free from pecuniary liability to the Steamship Company for any loss or damage, whether or not due to the negligence of the Navigation Company, to the extent to which

*Exhibit C. 34.*

such loss or damage is covered by such policies of insurance, and that if either or both of said steamships shall be laid up in port for a sufficient length of time to secure a lay-up rebate of any portion of the premium paid for such insurance, the amount of said lay-up rebate shall when recovered be paid over by the Steamship Company to the Navigation Company. The Navigation Company covenants and agrees for the benefit of the Steamship Company to furnish it with all information possessed by the Navigation Company which the Steamship Company may desire in order to enable it to secure such insurance upon the most favorable terms, and also particularly to make all such reasonable changes, additions, renewals and repairs upon or about each of said steamships as may be required by any inspector appointed by underwriters of said steamship, and to fully comply with all other reasonable requirements of such underwriters.

15. The Steamship Company covenants and agrees that all the earnings of said steamships while they are managed as agent by the Navigation Company as in this indenture provided, over and above the amounts hereinbefore specified as guaranteed by the Navigation Company, to the Steamship Company, shall belong to the Navigation Company, and the Navigation Company covenants and agrees that it will ask no other or further compensation for any services to be performed or expenditures to be made or anything whatever to be done under or in accordance with this indenture, or for any other service performed, work done or money expended for the benefit of the Steamship company, and that from the time of the arrival of said steamships at said port of San Pedro it will save the Steamship Company harmless from any and all debts and liabilities of whatsoever nature

*Exhibit C. 34.*

arising out of the presence, care, repair, maintenance or improvement of the said steamships on the Pacific Coast during said term, or out of the conduct of the business of said Steamship Company upon said Coast during said term, excepting only as otherwise provided in paragraph fourteen of this indenture.

16. It is mutually agreed that said steamships are not to be operated except between the ports of San Francisco and San Pedro or San Diego and / or intermediate ports without the written consent of the Steamship Company, but that the Steamship Company will give such consent to the operation of said steamships under the terms of this indenture between any ports of the Pacific Coast of North America not south of San Diego, California, nor north of Vancouver, British Columbia, upon being satisfactorily guaranteed against any additional cost to the Steamship Company for insurance of said steamships or either of them, or for any other reason to be caused by such change in the operation thereof.

17. The Navigation Company covenants and agrees at all times during its said agency to select reputable and capable men to be masters of said steamships, to the satisfaction of the Steamship Company.

18. If the Navigation Company shall at any time during the continuance of said term of its agency make default in the full performance of any of its covenants and agreements herein set forth, or of any of its duties as such agent, and said default shall continue for ten days after written notice thereof to the Navigation Company, then at the option of the Steamship Company the agency of the Navigation Company may be terminated by the Steamship Company, whereupon the

*Exhibit C. 34.*

Navigation Company shall be under all the obligations which under this indenture it is to incur at the end of the term hereof if said agency continues in force for said full term of five years, and in such event the Navigation Company's liability to the Steamship Company shall also include all damages and expenses resulting to the Steamship Company or incurred by it as a result of the failure of the Navigation Company to fully perform during said full term of five years all its obligations, whether under this indenture or arising out of the agency therein provided for.

In Witness Whereof Metropolitan Steamship Company, party of the first part, has caused this indenture to be signed and acknowledged or proved by its President and its corporate seal to be hereunto affixed and attested by its Secretary, and Pacific Navigation Company, party of the second part, has caused this indenture to be signed and acknowledged or proved by its President and its corporate seal to be hereunto affixed and attested by its Secretary, as of the 10th day of October, 1910.

METROPOLITAN STEAMSHIP COMPANY,
(Seal) By J. Turner Grieve, *President.*

Attest:
Douglas Nicholson,
*Secretary.*

PACIFIC NAVIGATION COMPANY.
By H. W. Goodall, *President.*

(Seal)

Attest:
T. H. McGovern,
*Secretary.*

*Exhibit C. 34.*

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

On the tenth day of October in the year 1910, before me personally came J. Turner Grieve and Douglas Nicholson, each to me known, and being by me duly sworn they did depose each for himself, the said Grieve that he resided in the County of Queens, City and State of New York, and is President of Metropolitan Steamship Company, the corporation described in and which executed the foregoing instrument, and that he subscribed his name thereto by the authority of the Board of Directors of said corporation; and the said Nicholson that he resides in the city, county and State of New York, and is Secretary of said Metropolitan Steamship Company and subscribed his name to the foregoing instrument by like authority, and both the said Grieve and the said Nicholson that they know the seal of said corporation, that the seal affixed to said instrument is such corporate seal, and that it was so affixed to the foregoing instrument by authority of the Board of Directors of said corporation.

Caroline D. Plage,
*Notary Public, Kings County.*
Certificate filed in New
York County.

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

On the tenth day of October in the year 1910, before me personally came H. W. Goodall and Thomas B. McGovern, each to me known, and being by me duly sworn they did depose each for himself, the said Goodall that he resides in the

city and county of San Francisco, California, and is President of Pacific Navigation Company, the corporation described in and which executed the foregoing instrument, and that he subscribed his name thereto by the authority of the Board of Directors of said corporation; and the said McGovern that he resides in the city, county and State of New York, and is Secretary of said Pacific Navigation Company and subscribed his name to the foregoing agreement by like authority. and both the said Goodall and the said McGovern that they know the seal of said corporation, that the seal affixed to said instrument is such corporate seal, and that it was so affixed to the foregoing instrument by authority of the Board of Directors of said corporation.

CAROLINE D. PLAGE,
*Notary Public, Kings County.*
Certificate filed in New
York County.

## Exhibit C. 35.

Letter, Robbins to McGovern, July 21, 1910.
(Printed on page 652 of record.)

## Exhibit C. 36.

Letter, McGovern to Robbins, July 30, 1910.
(Printed on page 654 of record.)

## Exhibit C. 37.

Letter, Robbins to McGovern, August 4, 1910.
(Printed on page 656 of record.)

## Exhibit C. 38.

First mortgage, Metropolitan S. S. Co. of New Jersey to American Trust Company.

THIS INDENTURE, dated the Fifteenth day of November, One thousand nine hundred and nine, by and between METROPOLITAN STEAMSHIP COMPANY, a corporation duly organized and existing under the Laws of the State of New Jersey (hereinafter termed the Company), party of the first part, and AMERICAN TRUST COMPANY, a corporation duly organized and existing under the Laws of the Commonwealth of Massachusetts, as Trustee (hereinafter termed the Trustee), party of the second part:

* * *

WHEREAS, at meetings duly called and held, the stockholders and Directors of the Company duly have authorized the execution and delivery of its First Mortgage Five Per Cent. Thirty-Year Sinking Fund Bonds, to an amount not exceeding in principal Three million dollars ($3,000,000), and to secure the same duly have authorized the execution and delivery of a mortgage or deed of trust in the form hereof, upon the vessels and properties of the Company herein mentioned, now owned and hereafter to be acquired; and

* * *

A certain tract of lands and flats, with the wharves, buildings and structures thereon, known as Union Wharf Property, situated in Boston in the County of Suffolk and Commonwealth of Massachusetts, bounded and described as follows:

*Exhibit C. 38.*

Northwesterly on Commercial Street about Three hundred and sixty-four and thirty-five hundredths (364.35) feet; northeasterly on land, dock and flats now or formerly of the Lincoln Wharf Company Five hundred and fifty-five and seventy-five hundredths (555.-75) feet; easterly on the harbor line Four hundred and sixty-two and forty-two hundredths (462.42) feet, and southwesterly on land now or late of the Proprietors of Sargents Wharf, in part by a line measuring Three hundred and three and seventy-five hundredths (303.75) feet, as established by an Indenture recorded with Suffolk Deeds, Lib. 414, Fol. 168, and in part by two lines as established by an Indenture recorded with said Deeds, Lib. 545, Fol. 278, one measuring One hundred and twenty-four and fifty hundredths (124.50) feet, the other measuring Two hundred and seven and fifty-five hundredths (207.55) feet, or however otherwise said premises may be bounded or described, and be all or any of said measurements more or less. Being the premises conveyed to the Metropolitan Steamship Company, a corporation organized under the Laws of the Commonwealth of Massachusetts (hereinafter termed the Massachusetts Company), by deed of Joseph D. Dilworth dated February 7, 1900, duly recorded Lib. 2664, Page 159; and Deed of Robert Codman, *et al.*, Trustees, duly recorded Lib. 2667, Page 333; and Deed of Union Wharf Company dated February 15,

*Exhibit C. 38.*

1900, duly recorded Lib. 2668, Page 214; and Deed of Henry M. Whitney dated May 12, 1904, duly recorded Lib. 2967, Page 489; and Deed of the Massachusetts Company to John Brophy dated May 16, 1905; and Deed of John Brophy to the Maine Company, dated May 16, 1905; said two last mentioned deeds being duly recorded with Suffolk Deeds. Said Union Wharf premises are conveyed with the benefit of the rights and privileges referred to in the deeds above mentioned, and under all licenses heretofore granted by the Board of Harbor and Land Commissioners affecting the same; a part of said Union Wharf premises being subject to a lease to Dennis & Lovejoy, duly recorded Lib. 2730, Page 529, and being further subject to a mortgage given by the Massachusetts Company to the Massachusetts Hospital Life Insurance Company for the sum of Five hundred thousand dollars ($500,000.) dated March 1, 1905, and recorded with said Suffolk Deeds, Lib. 3025, page 504;

Also all right, title or interest of the Company in, to or under a certain Indenture of Lease, dated June 1, 1889, between the Central Wharf and Wet Dock Corporation of Massachusetts, and the Massachusetts Company, of India Wharf, in Boston, Mass. at the rental therein stated, said lease running for the term of twenty (20) years from said date which lease on or about the 26th day of April, 1905, was extended for the period of ten (10) years from the expiration thereof, said lease having been assigned by the Massachusetts Company, to the Maine Company, and sold under the foreclosure of said First Mortgage of the Maine Company;

*Exhibit C. 38.*

Also all the vessels and steamships now owned by the Company, including the ships *Harvard, Yale, H. M. Whitney, H. F. Dimock, James Anderson, James S. Whitney, Herman Winter, William S. McGowan* and *N. Hayden* and the hull of each thereof, together with all the boilers, engines, machines, masts, bowsprits, sails, rigging, boats, anchors, cables, chains, tackle, apparel, furniture and equipment, and all other appurtenances to said vessels and steamships or any of them respectively appertaining and belonging, a copy of the certificate of enrollment of each of the said ships being annexed to this indenture and made a part hereof, as Schedules A, B, C, D, E, F, G, H and I, respectively;

Also all and singular the property, both real, personal and mixed, now owned or hereafter acquired by the Company, including the ships, steamships, steamboats, vessels, land, wharves, docks, piers, warehouses, buildings, approaches and structures now owned or hereafter acquired by the Company, AND ALSO including the equipment, machinery, materials, furniture, fuel, supplies, contracts, books, documents, choses in action, and other chattels and personal property now owned or hereafter acquired by the Company, AND ALSO including the easements, privileges and rights, and all other property of every kind and nature now owned or hereafter acquired by the Company, which shall include, without restricting the generality of the foregoing description, the property hereinabove described.

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## ARTICLE III.

### THE SINKING FUND.

Commencing on the fifteenth day of November, 1912, and on the fifteenth day of November in each and every year during the life of this indenture, the Company shall pay to the Trustee, at its office in the City of Boston, in gold coin of the United States of America of or equal to the present standard of weight and fineness, the sum of Fifty thousand dollars ($50,000) for a Sinking Fund, until the stock of the Company shall have received a dividend at a rate in excess of four per cent. per annum, in which event, all succeeding annual payments for the Sinking Fund shall be increased to One hundred thousand dollars ($100,000.)

As long as the Company shall make annual payments of Fifty thousand dollars ($50,000) for the Sinking Fund, it shall file with the Trustee, at the time of making each such payment, a certificate of the treasurer of the Company that prior to such payment the stock of the Company had not received dividend at a rate in excess of four per cent. per annum. The Trustee may receive such certificate as conclusive evidence of the facts stated therein and as conclusive proof of the amount of the payment to be made in any year on account of the Sinking Fund.

All moneys received by the Trustee for account of the Sinking Fund shall be applied by the Trustee as the Board of Directors may by resolution direct:

(*a*) To the purchase of bonds for the Sinking Fund after publishing invitations in the manner hereinafter provided for tenders of such bonds; or

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(*b*) To the purchase of bonds in the open market at prices not in excess of a price to be designated by the Board of Directors of the Company, but not above one hundred and five and accrued interest; or

(*c*) To the purchase of bonds designated by lot, in accordance with the provisions of Article II hereof.

In the event that the Board of Directors of the Company shall direct the Trustee to purchase bonds after publishing invitations for tenders of such bonds, the Trustee shall cause to be published in one daily newspaper in the City of Boston and in one daily newspaper in the City of New York, once in each week for four successive weeks, a notice inviting tenders of bonds for sale, and upon receipt of such tenders the lowest tenders shall be accepted and bonds purchased to the extent of the money then in the Sinking Fund, provided, however, that no tender shall be accepted at a price above that designated by the Board of Directors, which price shall not be above one hundred and five and accrued interest.

In case the Board of Directors shall direct the Trustee to purchase bonds designated by lot, then, upon request, drawings shall be made by the Trustee and notice shall be published in the manner set forth in Article II hereof for the redemption of a part of the bonds. The bonds so drawn shall be purchased at a premium of five per cent. (5%) on the interest date set in such notice, and from and after such date the holder thereof shall cease to be entitled to interest thereon and the title to all interest subsequently maturing shall vest in the Trustee for the benefit of the Sinking Fund. Bonds drawn for pur-

chase for the Sinking Fund must be presented, with all coupons maturing after the day on which they are so to be purchased and shall be paid for on presentation thereof on or after such day designated for purchase. The Trustee may cause to be registered in its name as Trustee any and all bonds at any time held by it in the Sinking Fund, but it shall be under no obligation to cause such bonds to be so registered. The bonds held by the Trustee for the benefit of the Sinking Fund shall continue to bear interest, and the Trustee shall collect the interest thereon as such interest matures, and the amounts so collected and the interest on any unpresented bonds at any time designated by lot for purchase for the Sinking Fund and accruing after the date set for such purchase shall also become a part of the Sinking Fund.

Such bonds of the Company as shall be from time to time acquired for the Sinking Fund shall be kept alive and may be reissued from time to time for the acquisition of new property at seventy-five per cent. (75%) of the cost price thereof, any such new property to be subjected to the lien of this indenture in the manner provided in Section 2 of Article V hereof. The bonds so held in the Sinking Fund shall be delivered by the Trustee from time to time only against the receipt of a copy of a resolution of the Board of Directors of the Company, certified under its corporate seal by the secretary, or assistant secretary thereof, and upon receipt of a copy of such resolution, the Trustee shall deliver to the Company, or upon its order, the amount of bonds called for thereby, but the aggregate principal amount of bonds at any time so delivered shall not exceed seventy-five per

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cent. (75%) of the amount actually paid for the property acquired, as stated in the certificate hereinafter described. The Trustee in each instance shall require the Company to furnish, in addition to such resolution of the Board of Directors, a certificate or certificates, of two officers of the Company which shall state:

(*a*) the nature of the property acquired, giving a brief description of the same;

(*b*) that said property is not subject to any lien or charge; and

(*c*) the price paid, and that the same was not in excess of the fair value thereof.

Such resolutions, certificates and statements shall be full and sufficient authority to the Trustee for the delivery of such bonds as herein provided. When any bond shall be so delivered by the Trustee, such bond shall be restored in every respect to the position in which it was before it was acquired for the Sinking Fund, and the holder thereof shall be entitled to all the rights and benefits of this indenture.

The bonds held by the Trustee for account of the Sinking Fund shall not be deemed outstanding in determining the amount of bonds prescribed for any action by bondholders under any provisions of this indenture, nor for the purpose of drawings for redemption under Article II.

All bonds in the Sinking Fund shall be so held for the further security of the outstanding bonds, unless and until they shall be reissued in accordance with the terms of this Article. All moneys held in the Sinking Fund under any of the provisions of this Article shall similarly be held by the Trustee as further security for the outstanding bonds until applied to the purchase, by the Trustee, of bonds for the Sinking Fund,

or until the designation by lot of bonds for purchase. From and after the designation by lot of bonds for purchase, such moneys shall, to the extent required to effect such purchase of the bonds so designated, be held for payment of the purchase price of the bonds so designated for purchase.

When the principal and interest of all other bonds shall have been paid in full or moneys deposited for their redemption in accordance with Article II hereof, and all payments to the Trustee, or otherwise, called for by any of the provisions of this indenture shall have been made by the Company, the Trustee shall, on written demand, pay to the Company, at the office of the Trustee, in the City of Boston, Mass., all moneys held in the Sinking Fund, and all the bonds held in the Sinking Fund shall forthwith be cancelled by the Trustee, and having been so cancelled shall thereafter be physically destroyed in the presence of a representative of the Trustee and a representative of the Company.

## ARTICLE VI.

### REMEDIES OF TRUSTEES AND BONDHOLDERS.

SECTION 1. The Company covenants and agrees that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any of the bonds, and that it will not, directly or indirectly, be a party to or approve any arrangement therefor by purchasing or funding said coupons or in any other manner. In case the payment of any such coupons should be so extended by or with the consent of the Company, such coupon or claim for interest so extended shall not be entitled in case of default hereunder

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to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all the outstanding bonds, and of all coupons on such bonds the payment of which has not been so extended; the intention of this agreement being to prevent any accumulation after maturity of coupons upon the bonds.

SECTION 2. In case any one or more of the following events, herein termed events of default, shall happen, viz.:

(*a*) default shall be made in the payment of any instalment of interest on any of the bonds as the same shall become payable and such default shall continue for the space of six months; or

(*b*) default shall be made in the due and punctual payment of the principal of any bonds when the same shall become due and whether at maturity or by declaration or otherwise; or

(*c*) default shall be made in the due observance or performance of any covenant or condition herein required to be kept or performed by the Company, and any such default shall have continued for a period of six months after written notice of such default from the Trustee to the Company; or

(*d*) a receiver shall be appointed of the properties or any of them on which, at the time, this indenture is a direct charge;

then, and in each and every such case, the Trustee personally, either in its own right as Trustee or as attorney in fact for the Company, or by its agents or attorneys, may enter into and upon all or any part of the trust estate of which the Trustee shall not be in possession, and may exclude the Company, its agents and servants,

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wholly therefrom and, having and holding the same, may use, operate, manage and control the steamers, vessels and property hereby conveyed, and each and every part thereof, regulate the tolls for the use thereof and the transportation of passengers thereon according to law, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents and servants, or attorneys, to the best advantage of the holders of the bonds, and upon every such entry the Trustee, at the expense of the trust estate, from time to time, either by purchase, repairs or construction, may maintain and restore, and insure or keep insured, the steamers, vessels, equipment and other property, buildings, and structures erected or provided for use in connection with the trust estate and whereof it shall become possessed, as aforesaid, in the same manner and to the same extent as is usual with steamship companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to it may seem judicious, and, in such case, the Trustee shall have the right to manage the trust estate, and to carry on the business and exercise all right and powers of the Company, either in the name of the Company or otherwise, as the Trustee shall deem best; and the Trustee shall be entitled to collect and receive all tolls, earnings, income, rents, issues and profits of the trust estate and every part thereof; and, after deducting the expenses of operating said steamers and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements,

*Exhibit C. 38.*

alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the trust estate, or any part thereof, as well as just and reasonable compensation for its own services, and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

In case the principal of the bonds shall not have become due, to the payment of the interest in default, in the order of the maturity of the instalments of such interest, with interest thereon at the rate of five per cent. per annum; such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

In case the principal of the bonds shall have become due, by declaration or otherwise, first, to the payment of the accrued interest (with interest on the overdue instalments thereof at the rate of five per cent. per annum) in the order of the maturity of the instalments, and then to the payment of the principal of all the bonds; in every instance such payments to be made ratably to the persons entitled to such payment, without any discrimination or preference.

These provisions, however, are not intended in any wise to modify the provisions of Section 1 of this Article.

In case all defaults of the Company shall be made good, including the payment of all interest in arrears, and all costs. charges and expenses incurred by the trustee as above mentioned shall have been paid and satisfied, then the Trustee

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shall restore to the Company possession of the trust estate so entered upon and not then sold, and such property shall thereupon be subject to all the trusts and provisions of these presents in the same manner and to the same extent as if such entry had not been made.

SECTION 3. If one or more of the events of default specified in Subdivisions (a) and (b) of Section 2 of this Article shall happen, the Trustee may, and, upon the written request of the holders of twenty-five per cent. in amount of the bonds then outstanding, shall, by notice in writing delivered to the Company, declare the principal of all the bonds then outstanding to be due and payable immediately. If one or more of the events of default specified in Subdivisions (c) and (d) of said Section 2 of this Article shall happen, the Trustee, upon the written request of the holders of twenty-five per cent. in amount of the bonds then oustanding, shall by notice in writing delivered to the Company, declare the principal of all bonds then outstanding shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable, and before any sale of the trust estate shall have been made, all arrears of interest upon all the bonds, with interest at the rate of five per cent. per annum on overdue instalments of interest, and all other amounts in respect of which the Company shall then be in default under this indenture other than the principal of the bonds, shall, together with the expenses of the Trustee, either be paid by the Company, or be collected out of

the trust estate, then and in every such case the holders of three-fourths in amount of the bonds outstanding, if one or more of the events of default specified in Subdivisions (*a*) and (*b*) of Section 2 of this Article shall have happened; or if none of said events of default shall have happened, then the holders of a majority in amount of the bonds then outstanding, by written notice to the Company and to the Trustee, may waive such default and its consequences, but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case, the Company and the Trustee shall be restored to their former position and rights hereunder in respect of the trust estate and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

SECTION 4. If one or more of the events of default shall happen, the Trustee, with or without entry, personally or by attorney, in its discretion

(a) may sell to the highest and best bidder, all and singular, the trust estate, and all right, title and and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of Section 6 of this Article, in which case such sale may be made in parcels as in said Section provided; such sale or

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sales shall be made at public auction at such place in the city of Boston, in the Commonwealth of Massachusetts, or at such other place, and at such time and upon such terms, as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or

(*b*) may proceed to protect and enforce its rights and the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of its rights or duties hereunder.

Section 5. Upon the written request of the holders of twenty-five (25) per cent. in amount of bonds, in case of the happening of one or more of the events of default, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all needful steps for the protection and enforcement of its rights and the rights of the holders of the bonds, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee, being advised by counsel, shall deem most expedient in the interest of the holders of the bonds.

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## ARTICLE IX.

### RELEASES OF THE TRUST ESTATE.

SECTION 1. Upon the written request of the Company, signed in its behalf by its president or a vice-president and by its secretary, the Trustee, without consideration paid to it, shall release from the lien or operation of this indenture all of the right, title and interest of the Company in, to or under a certain Indenture of Lease, dated June 1, 1889, between the Central Wharf & Wet Dock Corporation of Massachusetts, and the Metropolitan Steamship Company, a Massachusetts corporation, of India Wharf in Boston, more fully described in the granting clause hereof, so that the same may be transferred by the Company free and clear of any trust or lien created by this indenture, and the Company may sell said interest in said Indenture of Lease and receive the purchase price free and clear from any trust or lien created by this indenture.

SECTION 2. Until default in some one of the conditions of this indenture, the Company shall have the right at any time to sell, free from the encumbrances and trusts hereof, any steamer or steamers, real or leasehold estate, or other rights or property comprised in the trust estate, whenever in the judgment of the Board of Directors of the Company it is desirable, in the proper and judicious management and maintenance of its business, to sell the same, and upon receipt by it of a certificate signed and sworn to by a majority of the Directors of the Company, stating that in their judgment it is desirable, in the proper and judicious management and maintenance of the business of the Company, to sell the steamer or steamers, real or leasehold estate or other rights or property described in such cer-

tificate, and that the price for which it is proposed that the same shall be sold is fair and represents the true value thereof, the Trustees shall release from the lien of these presents any such steamer or steamers, real or leasehold estate or other rights or property so sold. The evidence of such release shall be a separate instrument executed by the Trustee, or in the grant of any real estate which may be sold by the Company pursuant to the provisions hereof, the Trustee may be joined therein expressing such release. No purchaser in good faith shall be bound to ascertain the authority of the Trustee to execute any such release or to inquire as to any facts required for the exercise of such authority.

SECTION 3. The Company shall have the right, from time to time, to sell or exchange any of the equipment, machinery or other parts of any steamer or other vessel at the time subject to this indenture, which may be worn out or superseded, and to substitute therefor new or improved equipment or machinery, and such sale or exchange may be made by the Company at its option by resolution of its Board of Directors, and the release or waiver of lien of this indenture for such purposes need not be made by the Trustee, but such new equipment or machinery shall be and become subject to the lien of this indenture when the same is placed in such steamer or other vessel or is otherwise connected with the property of the Company.

SECTION 4. The proceeds of any sale or sales made under the provisions of Section 2 of this Article shall be paid to the Trustee either in cash or by the delivery to the Trustee of bonds of the Company secured by this indenture at par to the

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amount of any such sale or sales. In the event that cash shall be paid to the Trustee, the same shall be paid out by the Trustee from time to time upon the written order of the President or a Vice-President and the Treasurer of the Company accompanied by a certificate signed and sworn to by a majority of the directors of the Company, that new and additional property equal in value to the amount so to be paid out has been acquired and that title thereto has been vested in the Trustee as part of the trust estate hereby conveyed, free and clear of all liens and encumbrances prior to the lien hereof. In the event that bonds shall be delivered to the Trustee, the bonds so delivered to the Trustee shall be kept alive and may be reissued for the acquisition of new or additional property in the manner provided for in Article III of this indenture and subject to the terms and conditions of said Article.

SECTION 5. In granting any release or in making any payment as hereinbefore provided, the Trustee may rely absolutely on the truth of any facts stated in the certificate signed and sworn to by a majority of the Directors of the Company, but the Trustee may in its discretion, at the expense of the Company, appoint some disinterested person to verify any values stated in any such certificate, and may require such other evidence as to any such facts as to it may seem appropriate. For the purpose of making such releases and payments the Trustee may assume that no default exists in any of the conditions of this indenture, unless it has knowledge to the contrary.

## Exhibit C. 39.

Letter, Marshall to Robbins, December 11, 1909. (Printed on page 842 of record.)

## Exhibit C. 40.

Letter, Robbins to Marshall. (Printed on page 845 of record.)

## Exhibit C. 41.

Certificate of Incorporation and extract from minutes of Chilmark Company.

CERTIFICATE OF INCORPORATION OF THE CHILMARK COMPANY.

WE the Undersigned, ARTHUR L. SMITH, LOUIS A. LINZ and GEORGE M. KASEMAN, all being of full age and all being citizens of the United States, and at least one of us being a resident of the State of New York, for the purpose of forming a stock corporation pursuant to and in conformity with the Business Corporations Law of the State of New York, do hereby make, sign and acknowledge this Certificate as follows:

FIRST: The name of the proposed corporation is, THE CHILMARK COMPANY.

SECOND: The purposes for which said corporation is to be formed are to buy, hold, own, manufacture, produce, sell, exchange, import, export, and otherwise hold and dispose of, either as principal or agent, and upon commission or otherwise, all kinds of personal property whatsoever,

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except bills of exchange, without limit as to amount and without restriction as to location.

To buy, sell, exchange, deal in, lease, hold, or improve real estate and the fixtures and personal property incidental thereto or connected therewith.

To apply for, purchase, or otherwise acquire, hold, own, use, operate, sell, assign, and grant or conduct licenses in respect to any or all inventions, improvements and processes issued in connection with or secured under Letters Patent of the United States or elsewhere.

To do everything necessary, suitable and proper for the accomplishment of any of the purposes, or the attainment of any of the objects, or the furtherance of any of the powers hereinbefore set forth, either alone or in association with other corporations or individuals, and to do every other act or acts, thing or things, incidental to or connected with the aforesaid business or any part or parts thereof, provided the same be not inconsistent with the Laws under which this corporation is organized.

THIRD: The amount of the Capital Stock of the said corporation is, FIFTY THOUSAND DOLLARS ($50,000), all of which shall consist of Common Stock.

FOURTH: The number of shares of which said Capital Stock shall consist is, FIVE HUNDRED ($500), and the par value of each share is, ONE HUNDRED DOLLARS ($100), and the amount of Capital Stock with which said corporation will begin business is, ONE THOUSAND DOLLARS ($1,000.)

FIFTH: The principal business office of the said corporation is to be located in the Borough

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of Manhattan, City, County and State of New York.

SIXTH: The duration of said corporation is to be perpetual.

SEVENTH: The number of Directors of the said corporation is three (3.)

EIGHTH: The names and post-office addresses of the Directors for the first year are as follows:

| NAMES. | POST-OFFICE ADDRESSES |
|---|---|
| Arthur L. Smith, | 1991 Anthony Avenue, New York. |
| Louis A. Linz, | 107 Schenck Avenue, Brooklyn, New York. |
| George M. Kaseman, | 286 Lefferts Avenue, Brooklyn, New York. |

NINTH: The names and post-office addresses of the subscribers of this Certificate, and the number of shares of stock which each agrees to take in said corporation are as follows:

| NAMES. POST-OFFICE ADDRESSES. | SHARES. |
|---|---|
| Arthur L. Smith, 1991 Anthony Avenue, New York City, N. Y. | 1 |
| Louis A. Linz, 107 Schenck Avtnue, Brooklyn, New York. | 1 |
| George M. Kaseman, 286 Lefferts Avenue, Brooklyn, New York. | 1 |

TENTH: The said corporation shall have power to purchase, acquire, hold, and dispose of, the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign.

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IN WITNESS WHEREOF we have made, signed and acknowledged this Certificate in triplicate, this 14th day of March, in the year One thousand nine hundred and Ten.

ARTHUR L. SMITH
LOUIS A. LINZ
GEORGE M. KASEMAN

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

On this 14th day of March, in the year One thousand nine hundred and Ten, before me personally came, ARTHUR SMITH, LOUIS A. LINZ and GEORGE M. KASEMAN, to me known and known to me to be the persons described in and who made, signed and executed the foregoing Certificate of Incorporation, and they severally before me acknowledged that they had made, signed, sealed and executed the same.

J. TURNER GRIEVE,
*Commissioner of Deeds For the City of New York.*

* * * *

The Secretary then presented and read a proposal from Douglas Nicholson to sell, assign and transfer to this Company, 14,373 shares of the capital stock of the Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, in consideration of the issue of stock of this company to the amount of FIFTY THOUSAND DOLLARS ($50,000) par value.

Upon motion duly made, seconded and carried the Secretary was requested to cause the same to be spread at length upon the Minutes.

*Exhibit C. 41.*

Law Offices of
BEALS & NICHOLSON
203 Broadway, New York
John D. Beals Douglas Nicholson

New York, October 26, 1910.

The Chilmark Company,
New York City, New York.

Gentlemen:—

I, the undersigned, do hereby propose and offer to sell, assign and transfer to your company, Fourteen thousand three hundred and seventy-three (14,373) shares of the capital stock of the Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, in consideration of the issue of the stock of your company to the amount of FIFTY THOUSAND ($50,000) DOLLARS par value.

Very truly yours,

DOUGLAS NICHOLSON.

After due and thorough discussion of the foregoing proposition, Mr. Smith offered the following preamble and resolution which was duly seconded and unanimously carried:

WHEREAS, Douglas Nicholson has made a proposition in writing for the sale, assignment and transfer on his part and the purchase by this Company of 14,373 shares of the capital stock of the Metropolitan Steamship Company, a corporation organized under the laws of the State of New Jersey, in consideration of the issue of stock of this company to the amount of FIFTY THOUSAND DOLLARS par value, and

WHEREAS, it appears after due consideration and investigation that it is necessary and advantageous and for the best interests of this Com-

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pany that it acquire, purchase and take over the said stock; and that the consideration mentioned in said proposal is the fair value of the said stock,

NOW THEREFORE BE IT RESOLVED that this company purchase from the said Douglas Nicholson, 14,373 shares of stock in the said Metropolitan Steamship Company, for stock of this company to the amount of FIFTY THOUSAND DOLLARS par value; and that the proposition of the said Douglas Nicholson, together with a copy of this resolution, be referred to the Board of Directors of this company, and we hereby authorize and instruct the said Board of Directors to perfect the purchase of said stock provided that the said stock is in their judgment of the value of the consideration proposed to be paid therefor.

There being no further business before the meeting, upon motion duly made, seconded and carried, the meeting adjourned.

WE, the undersigned, do hereby certify that the foregoing is a full, true and accurate record of all the proceedings of the foregoing meeting.

Dated, New York, 1910.

ARTHUR L. SMITH,
LOUIS A. LINZ
GEORGE M. KASEMAN

* * * *

(Minutes of first Directors Meeting.)

The Secretary then reported that a proposition had been submitted to the Incorporators and Subscribers to the capital stock of this Company at their meeting held on the 26th day of October, 1910, by Douglas Nicholson, offering to sell,

*Exhibit C. 41.*

assign and transfer to this company for stock of this company to the amount of FIFTY THOUSAND DOLLARS par value, 14,373 shares of the capital stock of the Metropolitan Steamship Company, a New Jersey corporation, and that at the said meeting the Stockholders had expressed themselves in favor of accepting the said proposition and had referred the matter to the Board of Directors with power to act in reference to the same in accordance with their judgment and discretion.

The said proposition was carefully discussed by the Board and upon motion duly made, seconded and carried it was

RESOLVED that whereas a resolution was duly passed at a meeting of the Stockholders of this Company held on the 26th day of October, 1910, accepting a certain proposition dated the 26th day of October, 1910, made by Douglas Nicholson for the sale and transfer to this company for the stock of this company to the amount of FIFTY THOUSAND DOLLARS par value, of 14,373 shares of the capital stock of the Metropolitan Steamship Company, a New Jersey corporation; and authorizing and instructing this Board of Directors to accept the aforesaid proposition provided in the judgment of this Board the price to be paid therefor was the fair valuation thereof, to which proposition and offer and resolution of said Stockholders meeting, reference is hereby made, and

WHEREAS in the judgment of this Board of Directors, after careful examination and fair appraisement, the said stock is necessary and advantageous for the business of this company and the consideration proposed to be paid therefor is the fair value thereof,

*Exhibit C. 41.*

RESOLVED that this company accept the aforesaid proposition of Douglas Nicholson and purchase from him 14,373 shares of the capital stock of the Metropolitan Steamship Company, and issue to him in payment therefore stock of this company to the amount of FIFTY THOUSAND DOLLARS par value; and that the proper officers of this company are hereby authorized, empowered and directed to consummate the purchase of the said stock.

FURTHER RESOLVED that an assessment of one hundred per cent. (100%) to be levied upon the shares of stock subscribed by the incorporators, as evidenced by the Certificate of Incorporation.

FURTHER RESOLVED that payment of said subscriptions and assessment be deemed to be made by the property agreed to be sold to the company as set forth in the preceding resolution, it having been agreed between the vendor and the incorporators that the stock to be issued to the vendor and his nominees under said agreement should include the stock subscribed by the incorporators.

There being no further business before the meeting, upon motion duly made, seconded and carried the meeting adjourned.

We, the undersigned, do hereby certify that the foregoing is a full, true and accurate record of the proceedings at the foregoing meeting.

ARTHUR L. SMITH
LOUIS A. LINZ
GEORGE M. KASEMAN

**Exhibit C. 42.**

Stock book Chilmark Company (not printed).

## Exhibit C. 43.

Letter, American Trust Company to Chase National Bank, March 1, 1910.

March 1, 1910.

*Re—Metropolitan Steamship Company.*

Chase National Bank,
New York, N. Y.

Gentlemen:—

We enclose herewith instrument of Release executed by this Company as Trustee for the Metropolitan Steamship Company.

You are respectfully requested to deliver said instrument to either Mr. John W. McKinnon or Mr. Campbell Carrington, respectively President and Treasurer of the Metropolitan Steamship Company, upon the delivery to you by them, or either of them, of Six Hundred and Fifty Thousand Dollars ($650,000.) par value First Mortgage Five per Cent Bonds of said Metropolitan Steamship Company dated November 15, 1909. issued under Mortgage of said Company of said date and certified by this Company as Trustee. Said Bonds to have Coupons due July 1, 1910, and all subsequent Coupons attached.

In delivering the Release and receiving the Bonds, there are to be no restrictions of any kind attaching to the Bonds. and immediately upon receipt, you will kindly ship the Bonds to us by Express, charges collect, marking the package "BONDS, VALUE $650,000."

If the delivery of the instrument and the receipt of the Bonds by you is not effected by the close of business Wednesday, March 2nd, kindly advise us by wire.

*Exhibit C. 44.*

Upon receipt of memorandum of your charges and expenses in connection with this transaction, we will promptly remit.

Very truly yours,

CHB./M.
(Encls.)
REG.

*Secretary.*

## Exhibit C. 44.

Affidavit of Shaw and McKinnon *in re* release of freight boats, February 23, 1910.

The undersigned, a majority of the Directors of Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, being duly sworn, hereby certify that in their judgment it is desirable in the proper and judicious management and maintenance of the business of said Company to sell for Six Hundred Fifty Thousand Dollars ($650,000) the vessels named as follows: H. M. Whitney, H. F. Dimock, James S. Whitney, Herman Winter, James Anderson, William S. McGowan, N. Hayden, C. H. Prior, J. W. Walker, Eastern and Western; and the undersigned further certify that in their judgment the price for which it is proposed that the same shall be sold is fair and represents the true value thereof.

In Witness Whereof we have severally hereunto set our hands on this 23d day of February, 1910.

(Signed) GEORGE E. SHAW.
(Signed) JOHN W. McKINNON.

*Exhibit C. 45.*

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.:*

On the 23d day of February in the year 1910, before me personally came George E. Shaw and John W. McKinnon, to me personally known, who, being by me duly and severally sworn, did depose and say, that they are a majority of the directors of Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, and that the foregoing statements are true.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

MARTHA C. LONGENDYKE,
*Notary Public.*
(My Commission expires March 30, 1911.)

## Exhibit C. 45.

Letter, American Trust Company to Austin, February 19, 1910.

Feb. 19, 1910.

Mr. Calvin Austin,
c/o Eastern Steamship Co.,
Boston, Mass.

Dear Mr. Austin:—

The Metropolitan Steamship Company of New Jersey has requested the American Trust Company to release certain steamship property from under the mortgage made by the Metropolitan Steamship Company to this corporation, dated November 15, 1909, and, in that connection, we desire to have a valuation made by you of the steamships held by us under that mortgage, and

*Exhibit C. 45.*

we should appreciate it very much if you would appraise the following boats:

Harvard
Yale
H. M. Whitney
H. F. Dimock
James Anderson
James S. Whitney
Herman Winter
William S. McGowan
N. Hayden

We desire to have this appraisal on hand as early as some time Wednesday, February 23d, and from your knowledge of and familiarity with this property, we thought that you might be able to give us your opinion by that time.

On Monday, as I understand it, the boats are about evenly divided between Boston and New York, but you will have no difficulty in ascertaining their whereabouts by telephoning to the Company.

If your opinion as to the value of the freight boats and lighters taken together is different from the sum obtained by adding together the separate items assigned by you to each boat and lighter, kindly give us your opinion as to the value of these freight boats and lighters taken together.

If your opinion as to the value of the Harvard and Yale taken together differs from the addition of the separate items assigned to each, kindly give us your opinion of the value of the Harvard and Yale taken together.

Of course, you understand that your charge for this appraisal will be paid by us.

*Exhibit C. 46.*

If for any reason you are unable to make this appraisal, will you kindly wire me to that effect.

Trusting that you will be able to do it, I am,

Very truly yours,

*President.*

## Exhibit C. 46.

Letter, Austin to American Trust Company, February 21, 1910.

EASTERN STEAMSHIP COMPANY.

Boston, Mass., Feb. 21, 1910.

Mr. R. C. Fessenden,
Treasurer, American Trust Company,
53 State Street, Boston.

My dear Mr. Fessenden:

I am in receipt of your favor of the 19th inst., and in response to your request, enclose statement of my appraisal values of the steamships, equipment and equity in Union Wharf, belonging to the Metropolitan Steamship Company.

In taking the matter up with William Cramp & Son Shipbuilding Company, Philadelphia, who built the "Dimock," "Herman Winter" and the "H. M. Whitney," relative to their present value, and what it would cost to duplicate them, they tell me they will duplicate them for $800,000., including the "J. S. Whitney;" also, that a sale of the four steamers in question, at an average price of $125,000 each, would be a fair valuation.

The "Yale" and "Harvard" cost $2,474,588.71, and have been in commission two seasons, working about twelve months; and I think a 10

*Exhibit C. 47.*

per cent. depreciation for two years about a fair reduction.

Yours truly,

(Signed) CALVIN AUSTIN.

## Exhibit C. 47.

Appraisal of Austin, February 21, 1910.

METROPOLITAN STEAMSHIP CO.

| PROPERTY | | FEBRUARY 21, 1910 | |
|---|---|---|---|
| STEAMERS | WHEN BUILT | | |
| H. F. Dimock | 1884 | 75,000.00 | |
| H. Winter | 1887 | 100,00.000 | |
| H. M. Whitney | 1890 | 150,000.00 | |
| J. S. Whitney | 1900 | 175,000.00 | $500,000.00 |
| LIGHTERS | | | |
| J. Anderson | 1877 | 2,000.00 | |
| W. S. McGowan | 1880 | 2,000.00 | |
| N. Hayden | 1881 | 2,500.00 | |
| C. H. Prior | 1882 | 1,500.00 | |
| J. W. Walker | 1888 | 1,500.00 | 9,500.00 |
| CAR FLOATS | | | |
| Eastern | 1896 | 4,000.00 | |
| Western | 1901 | 4,000.00 | 8,000.00 |
| Union Wharf, Boston | 850,000.00 | | |
| Less Mortgage thereon | 500,000.00 | 350,000.00 | 350,000.00 |
| OFFICE FURNITURE, ETC. | | | |
| Boston | | 3,000.00 | |
| New York | | 1,000.00 | 4,000.00 |
| | | | 871,500.00 |

Union Wharf cost $939,163.33

*Exhibit C. 48.*

METROPOLITAN STEAMSHIP COMPANY
PROPERTY ACCOUNT
February 21, 1910.

| *Steamer* | *When Built* | *Cost* |
|---|---|---|
| Harvard | 1907 | |
| | | $2,474,588.71 |
| Yale | 1907 | |
| | Less 10% | 247,458.87 |
| | | 2,227,129.84 |

## Exhibit C. 48.

Resolution, Hudson Navigation Company *in re* release of freight boats.

"RESOLVED that the proper officers of this Company be and they are hereby authorized and directed to consent on behalf of this Company as the owner of Six Hundred Ninety-Three (693) bonds of the Metropolitan Steamship Company of New Jersey, to the release of the freight boats and barges of the said Metropolitan Steamship Company, upon the payment to the American Trust Company, Trustee under said issue of bonds of the Metropolitan Steamship Company, of Six Hundred and Fifty Thousand Dollars ($650,000.) in accordance with the deed of trust or mortgage securing said bonds.

IT IS FURTHER RESOLVED that said officers be and they are hereby authorized and directed on behalf of this Company to sign such consent or other documents, and to do such other acts and things as may be necessary to carry out the above resolutions."

I hereby certify that the above is a true extract from the minutes of a meeting of the

*Exhibit C. 49.*

Board of Directors of the HUDSON NAVIGATION COMPANY duly held.

(Signed) CAMPBELL CARRINGTON
*Secretary of the*
*Hudson Navigation Company.*

SEAL.

## Exhibit C. 49.

Release of freight boats and resolution of American Trust Company in regard thereto.

KNOW ALL MEN BY THESE PRESENTS: that WHEREAS the AMERICAN TRUST COMPANY, a corporation duly organized and existing under the Laws of the Commonwealth of Massachusetts, is Trustee under an Indenture of mortgage dated the fifteenth day of November, 1909, made to it by the METROPOLITAN STEAMSHIP COMPANY, a corporation organized and existing under the laws of the State of New Jersey, to secure an issue of bonds of said Metropolitan Steamship Company, to the amount of Three Million Dollars ($3,000,000.) at par, which indenture of mortgage is recorded with the Collector of Customs at Bath, Maine, in Book of Mortgages 2, page 118, and with the Collector of Customs at New York, in Book 8 of mortgages, page 10, and with Suffolk Registry of Deeds, Boston, Massachusetts, Libro 3409, page 401; and

WHEREAS pursuant to the terms of said Indenture of mortgage said Metropolitan Steamship Company has requested said American Trust Company as Trustee under said Indenture of mortgage to execute a release from under the lien of said mortgage of the steamers

*Exhibit C. 49.*

and vessels hereinafter named, and has caused to be filed with said American Trust Company as Trustee a certificate signed and sworn to by a majority of the directors of said Metropolitan Steamship Company, stating that in their judgment it is desirable in the proper and judicious management and maintenance of the business of the Company to sell said steamers and vessels hereinafter named, and that the price for which it was proposed that the same should be sold is fair and represents the true value thereof; and

WHEREAS contemporaneously with the delivery hereof there has been paid to said American Trust Company as Trustee the proceeds of said sale by the delivery to the Trustee of such bonds of said Metropolitan Steamship Company at par to the amount of such sale, to wit, to the amount of Six Hundred Fifty Thousand Dollars ($650,000.);

NOW, THEREFORE, in consideration of said payment, and pursuant to the terms of said indenture of mortgage, said American Trust Company, Trustee as aforesaid, hereby remises, releases, conveys, assigns, confirms, transfers and sets over unto the said Metropolitan Steamship Company and its successors and assigns forever all the right, title and interest acquired by said American Trust Company, Trustee as aforesaid, in, by and under said indenture of mortgage dated November 15, 1909, in and to the following steamers and vessels, to wit: The ships H. M. Whitney, H. F. Dimock, James S. Whitney, Herman Winter, James Anderson, William S. McGowan, N. Hayden, C. H. Prior, J. E. Walker; the vessel used as a car float and called the Eastern; the vessel used as a car float and called the Western.

*Exhibit C. 49.*

To Have and to Hold the same to the said Metropolitan Steamship Company, its successors and assigns, to their own use and behoof forever; meaning and intending to release said steamers and vessels from the lien of said mortgage.

But this release shall not in any way affect or impair the right of said American Trust Company as Trustee, to hold under the said indenture of mortgage, as security for the sum remaining due thereon, or to sell under the power of sale in said indenture of mortgage contained, all the remainder of the premises thereby conveyed and not hereby released.

In Witness Whereof said American Trust Company, Trustee as aforesaid, has caused its corporate seal to be hereto affixed, and these presents to be executed in its name and behalf by Russel G. Fessenden, its President, and Charles H. Bowen, its Secretary, thereunto duly authorized, this first day of March, 1910.

AMERICAN TRUST COMPANY, Trustee.
By

(Signed) RUSSEL G. FESSENDEN
*President.*

" C. H. BOWEN
*Secretary*

CORPORATE SEAL.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston, March 1, 1910

Then personally appeared Russel G. Fessenden, President, and Charles H. Bowen, Secretary of the American Trust Company, and acknowledged the foregoing instrument by them sub-

scribed to be the free act and deed of said American Trust Company, Trustee as aforesaid.

Before me,

(Signed) EUGENE W. LEIGHTON
*Notary Public.*

At a meeting of the Executive Committee of the Board of Executors of the American Trust Company held on Thursday the Twenty-Fourth day of February, 1910, the following vote was passed:—

"WHEREAS, This Company has been requested to release for the sum of Six Hundred and Fifty Thousand Dollars ($650,000.), payable in cash or bonds at par, of the Metropolitan Steamship Company to this Company dated November 15, 1909, to wit: the vessels called the

H. M. Whitney
H. F. Dimock
James Whitney
Herman Winter
James Anderson
William S. McGowan
N. Hayden
C. H. Prior
J. W. Walker

and the car floats called the

Eastern
Western

and,

Whereas, the requirements of the mortgage in relation to releases have been complied with by the mortgagor,

VOTED:

That the President and Secretary, or other proper officers of this Company be and hereby

*Exhibit C. 50.*

are authorized to execute in the name and behalf of this Company, as Trustee, a release of said vessels from under said mortgage in such form as they shall by the execution thereof approve."

A true copy from the records of the Executive Committee of the Board of Directors of said American Trust Company.

Attest:

(Signed) J. C. HOWE,
*Secretary.*

Corporate Seal

## Exhibit C. 50.

Letter, Chase National Bank to American Trust Company, March 5, 1910.

THE CHASE NATIONAL BANK.
NEW YORK

March 5, 1910

C. H. Bowen, Esq., Secretary,
American Trust Co.,
Boston, Mass.

Dear Sir:

Referring to your letter of the 1st inst., and subsequent correspondence, we have to-day delivered to Mr. John W. McKinnon the release executed by your Company, as Trustee for the Metropolitan Steamship Co., upon receiving from him $650,000. Metropolitan Steamship Co. 1st Mtg 5% bonds, due 1939:

| Nos. | |
|---|---|
| 2785/2859 | 75 |
| 1707/1802 | 96 |
| 1617/620 | 4 |

*Exhibit C. 51.*

| | |
|---|---|
| 2860/2906 | 47 |
| 2710/2784 | 75 |
| 2635/2709 | 75 |
| 2501/2559 | 59 |
| 2560/2634 | 75 |
| 324/372 | 49 |
| 376/427 | 52 |
| 2485/2500 | 16 |
| 1807/1828 | 22 |
| 38/42 | 5 |
| | 650 |

We enclose these bonds herewith by express, valued at $650,000., receipt of which kindly acknowledge.

Yours very truly,

CDS A. C. Andrews, *Assistant Cashier.*

(Original of this letter sent by Express with the securities.)

RED'D MAR 7 1910

## Exhibit C. 51.

Minutes, Metropolitan S. S. Co. of New Jersey, March 8, 1910.

METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY.

SECRETARY'S CERTIFICATE

MINUTES of a special meeting of the Board of Directors of Metropolitan Steamship Company (of New Jersey) held at the New York office of the Company, No. 203 Broadway, Borough of Manhattan, New York City, on the 8th

*Exhibit C. 51.*

day of March, 1910 at two o'clock in the afternoon.

PRESENT:

Mr. J. Turner Grieve,
Mr. Joseph B. Righter,
Mr. Douglas Nicholson,

being all the Directors of the Company.

The President of the Company, Mr. Grieve, took the chair and called the meeting to order.

Mr. Righter then tendered his resignation as Secretary of the Company, to take effect immediately.

Upon Motion Duly, Made, Seconded and Carried, Mr. Righter's resignation as Secretary of the Company was accepted.

The chair then stated that the next business before the meeting was the election of a secretary to fill the unexpired term of Mr. Righter, resigned.

Upon Motion Duly Made, Seconded and Carried, Mr. Nicholson was elected Secretary of the Company to fill the unexpired term of Mr. Righter, resigned.

Mr. Nicholson thereupon accepted the office of Secretary of the Company and immediately entered upon the discharge of his official duties.

There being no further business before the meeting, upon motion duly made, seconded and carried, the meeting adjourned.

JOSEPH B. RIGHTER,
DOUGLAS NICHOLSON, *Secretary.*

I, Douglas Nicholson, Secretary of the Metropolitan Steamship Company (of New Jersey) DO HEREBY CERTIFY that the foregoing is a full, true and accurate copy of the Minutes of

*Exhibit C. 52.*

a Special Meeting of the Board of Directors of the said Company held at the New York office of the Company, No. 203 Broadway, Borough of Manhattan, New York City, on the 8th day of March, 1910, at two o'clock in the afternoon.

(Signed DOUGLAS NICHOLSON,
SEAL. *Secretary.*

## Exhibit C. 52.

Minutes, Metropolitan S. S. Co. of New Jersey, March 5, 1910.

METROPOLITAN STEAMSHIP COMPANY

A Corporation organized under the laws of the State of New Jersey.

SECRETARY'S CERTIFICATE

"Mr. Shaw then tendered his resignation as President and a Director of the Company, to take effect immediately.

UPON MOTION DULY MADE, SECONDED AND CARRIED, the resignation of Mr. Shaw as President and a Director of the Company was accepted. Mr. Shaw then retired from the meeting.

"Mr. McKinnon then took the chair made vacant by the resignation of Mr. Shaw, in pursuance of a motion to that effect duly made, seconded and carried.

"UPON MOTION DULY MADE, SECONDED AND CARRIED, Mr. J. Turner Grieve was elected a Director and President of the Company to fill the unexpired term of Mr. George E. Shaw, resigned.

"Mr. Grieve was then notified of his election as President and a Director of this Company to fill the unexpired term of Mr. George E. Shaw, resigned.

*Exhibit C. 52.*

"Mr. Grieve thereupon accepted the position of Director and President of the Company and entered immediately upon the discharge of his official duties.

"Mr. McKinnon then vacated the chair in favor of Mr. Grieve, who presided for the remainder of the meeting.

"Mr. McKinnon then tendered his resignation as Vice-President and a Director of the Company, to take effect immediately.

"Upon Motion Duly Made, Seconded and Carried, Mr. McKinnon's resignation as Vice-President and a Director of the Company was accepted.

"Mr. McKinnon was then notified of the acceptance of his resignation and he thereupon retired from the meeting.

"Upon Motion Duly Made, Seconded and Carried, Mr. Joseph Righter was elected a Director of the Company to fill the unexpired term of Mr. McKinnon, resigned.

"Mr. Righter was then notified of his election as a Director of the Company to fill the unexpired term of Mr. McKinnon, resigned, and he thereupon accepted the office of Director and immediately entered upon the discharge of his official duties.

"Mr. Campbell Carrington then tendered his resignation as Secretary and Treasurer of the Company, to take effect immediately.

"Upon Motion Duly Made, Seconded and Carried, the resignation of Mr. Campbell Carrington as Secretary and Treasurer of the Company was accepted.

"Upon Motion Duly Made, Seconded and Carried, Mr. Joseph B. Righter was elected Secre-

*Exhibit C. 52.*

tary to fill the unexpired term of Mr. Carrington, resigned.

"Mr. Righter was then notified of the action of the Board and thereupon accepted the position of Secretary of the Company.

"Mr. Edward B. Wire then tendered his resignation as Assistant Secretary and a Director of the Company, to take effect immediately.

"Upon Motion Duly Made, Seconded and Carried, Mr. Wire's resignation was accepted and Mr. Wire was notified of such acceptance and he thereupon retired from the meeting.

"Upon Motion Duly Made, Seconded and Carried, Mr. Douglas Nicholson was elected Assistant Secretary and a Director of the Company to fill the unexpired term of Mr. Wire, resigned.

"Mr. Nicholson was then notified of his election as Assistant Secretary and a Director of the Company to fill the unexpired term of Mr. Wire, resigned, and he thereupon accepted the said offices and immediately entered upon the discharge of his official duties."

I, DOUGLAS NICHOLSON, Secretary of the METROPOLITAN STEAMSHIP COMPANY, a corporation organized under the laws of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a full, true and accurate transcript of the Minutes of a Special Meeting of the Board of Directors of the Metropolitan Steamship Company, held on the 5th day of March, 1910, for the election of Directors to fill the unexpired terms of Messrs. Shaw, McKinnon and Wire, resigned.

And I Further Certify, that the aforesaid J. TURNER GRIEVE, JOSEPH B. RIGHTER and DOUGLAS NICHOLSON, have been continuously since the said 5th day of March, 1910, and

*Exhibit C. 53.*

still are all of the Directors of the said Company.

Dated June 27th, 1910.

(Signed) DOUGLAS NICHOLOSN,
*Secretary.*

(SEAL).

## Exhibit C. 53.

Minutes, Metropolitan S. S. Co. of New Jersey, June 16, 1910.

METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY.

*SECRETARY'S CERTIFICATE.*

MINUTES of a special meeting of the Board of Directors of the Metropolitan Steamship Company, held at the New York office of the Company at No. 203 Broadway, in the Borough of Manhattan, City of New York, on the 16th day of June, 1910, at two o'clock in the afternoon.

PRESENT: Messrs. J. Turner Grieve,
Joseph B. Righter, and
Douglas Nicholson,

being all the Directors of the Company.

The President of the Company, Mr. Grieve, took the chair and called the meeting to order.

Upon Motion Duly Made, Seconded and Carried, it was unanimously

VOTED: That in the judgment of the Board of Directors of this Company it is desirable in the proper and judicious management and maintenance of its business to sell for Three Hundred Fifty Thousand ($350,000.) Dollars in the First Mortgage Bonds of this Company at par, that is to say, for three hundred and fifty (350)

*Exhibit C. 53.*

of said First Mortgage Bonds for One Thousand Dollars each, the real estate in the City of Boston, Massachusetts, known as Union Wharf property, being a certain tract of lands and flats with the wharves, buildings and structures thereon, bounded and described as follows:

Northwesterly on Commercial Street about three hundred and sixty-four and thirty-five hundredths ($364.35) feet; northwesterly on land, dock and flats now or formerly of the Lincoln Wharf Company five hundred and fifty-five and seventy-five hundredths (555.75) feet; easterly on the harbor line four hundred and sixty-two and forty-two hundredths (462.42) feet, and southwesterly on land now or late of the Proprietors of Sargents Wharf, in part by a line measuring three hundred and three and seventy-five hundredths (303.75) feet, as established by an indenture recorded with Suffolk Deeds, Liber 414, Fol. 168, and in part by two lines established by an indenture recorded with said deeds, Liber 545, Fol. 278, one measuring one hundred and twenty-four and fifty hundredths (124.50) feet, and the other measuring two hundred and seven and fifty-five hundredths (207.55) feet, or however otherwise said premises may be bounded or described, and be all or any of said measurements more or less. Being the premises conveyed to the Metropolitan Steamship Company, a corporation organized under the laws of the Commonwealth of Massachusetts (hereinafter called the Massachusetts Company) by deed of Joseph D. Dillworth dated February 7, 1900, duly recorded Lib. 2664, page 159, and Deed of Robert Codman, et al., Trustees, duly recorded Lib. 2667, page 333; and deed of Union Wharf Company dated Feby. 15, 1900, duly recorded in

*Exhibit C. 53.*

Liber 2668, page 214; and deed of Henry M. Whitney dated May 12, 1904, duly recorded Liber 2967, page 489; and deed of the Massachusetts Company to John Brophy dated May 18, 1905; and Deed of John Brophy to the Metropolitan Steamship Company, a corporation organized under the laws of the State of Maine, dated May 16, 1905, said two last mentioned deeds being duly recorded with Suffolk Deeds. Said Union Wharf premises are to be conveyed with the benefits of the rights and privileges referred to in the Deeds above mentioned, and under all licenses heretofore granted by the Board of Harbor and Land Commissioners affecting the same; a part of said Union Wharf premises being subject to a lease expiring March 1, 1919, of the J. L. Kelso Warehouse Company at an annual rental of Ten Thousand Dollars ($10,000.) payable monthly; and said Wharf premises being further subject to a mortgage given by the Massachusetts Company to the Massachusetts Hospital Life Insurance Company for the sum of Five Hundred Thousand ($500,000.) dated March 1st, 1905, and recorded in Suffolk Deeds, Liber 3025, Page 504;

and that in the opinion of this Board the said price for which said property is sold is fair and represents the true value thereof.

There being no other business before the meeting, upon motion duly made, seconded and carried, the meeting adjourned.

J. TURNER GRIEVE
JOSEPH B. RIGHTER
DOUGLAS NICHOLSON

*Exhibit C. 54.*

I, DOUGLAS NICHOLSON, Secretary of the Metropolitan Steamship Company of New Jersey, SO HEREBY CERTIFY that the foregoing is a full, true and accurate copy of the Minutes of a Special Meeting of the Board of Directors of said Company, held at the New York office of the Company No. 203 Broadway, Borough of Manhattan, City of New York, on the 16th day of June, 1910, at two o'clock in the afternoon.

Dated, June 29, 1910.

(Signed) DOUGLAS NICHOLSON,
*Secretary.*

SEAL.

## Exhibit C. 54.

Certificate of Directors of Metropolitan S. S. Co. of New Jersey, June 17, 1910.

The undersigned, being a majority of the directors of the Metropolitan Steamship Company, a corporation organized and existing under the Laws of the State of New Jersey, and a party to the indenture of mortgage to American Trust Company dated November 15, 1909, which indenture mortgages, among other property.

A certain tract of lands and flats, with the wharves, buildings and structures thereon, known as Union Wharf Company, situated in Boston in the County of Suffolk and Commonwealth of Massachusetts, bounded and described as follows:—

Northwesterly on Commercial Street about three hundred and sixty-four and thirty-five hundredths (364.35) feet; northeasterly on land, dock and flats now or

*Exhibit C. 54.*

formerly of the Lincoln Wharf Company five hundred and fifty-five and seventy-five hundredths (555.75) feet; easterly on the harbor line four hundred and sixty-two and forty-two hundredths (462.42) feet, and southwesterly on land now or late of the Proprietors of Sargents Wharf, in part by a line measuring three hundred and three and seventy-five hundredths (303.75) feet, as established by an indenture recorded with Suffolk Deeds, Lib. 414, Fol. 168, and in part by two lines as established by an indenture recorded with said deeds, Lib. 545, Fol. 278, one measuring one hundred and twenty-four and fifty hundredths (124.50) feet, the other measuring two hundred and seven and fifty-five hundredths (207.55) feet, or however otherwise said premises may be bounded or described, and be all or any of said measurements more or less. Being the premises conveyed to the Metropolitan Steamship Company, a corporation organized under the laws of the Commonwealth of Massachusetts (hereinafter called the Massachusetts Company), by deed of Joseph D. Dilworth dated February 7, 1900, duly recorded Lib. 2664, page 159; and deed of Robert Codman, et al., Trustees, duly recorded Lib. 2667, page 333; and deed of Union Wharf Company dated February 15, 1900, duly recorded Lib. 2668, page 214, and deed of Henry M. Whitney, dated May 12, 1904, duly recorded Lib. 2967, page 489, and deed of Massachusetts Company to John Brophy dated May 16, 1905; and deed of John Brophy to the Metropolitan Steamship Company, a corporation of Maine, dated

*Exhibit C. 55.*

May 16, 1905; said two last mentioned deeds being duly recorded with Suffolk Deeds;

hereby being duly sworn, certify and state under oath that in our judgment it is desirable in the proper and judicious management and maintenance of the business of said Metropolitan Steamship Company, to sell the real estate above described for Three Hundred and Fifty Thousand Dollars ($350,000.), and that the said price for which the said property is sold is a fair price and represents the true value of said property.

In Witness Whereof, we have hereunto set our hands this 17th day of June, 1910.

Sworn to before me this 17th day of June, 1910.

(Signed) J. TURNER GRIEVE,
(Signed) JOSEPH B. RIGHTER,
(Signed) DOUGLAS NICHOLSON.

(Signed) William Byrne,
*Com of Deeds*
City of N. Y. 92.

## Exhibit C. 55.

Release and deed of Union Wharf.

(Copy.)

KNOW ALL MEN BY THESE PRESENTS:

That Whereas, the American Trust Company, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, is Trustee under an indenture of mortgage dated the 15th day of November, 1909, made to it by the Metropolitan Steamship Company, a corporation organized and existing

*Exhibit C. 55.*

under the laws of the State of New Jersey, to secure an issue of bonds of said Metropolitan Steamship Company to the amount of Three Million Dollars ($3,000,000), at par, which indenture of mortgage is recorded with Suffolk Registry of Deeds, Boston, Massachusetts, Lib. 3409, page 401; and

WHEREAS, pursuant to the terms of said indenture of mortgage said Metropolitan Steamship Company has required said American Trust Company as Trustee under said indenture of mortgage to execute a release from under the lien of said mortgage of the real estate hereinafter described, and has caused to be filed with said American Trust Company, as Trustee, a certificate signed and sworn to by a majority of the directors of the said Metropolitan Steamship Company, stating that in their judgment it is desirable in the proper and judicious management and maintenance of the business of the Company to sell said real estate hereinafter described, and that the price for which said real estate is sold is fair and represents the true value thereof; and

WHEREAS, said Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, has sold to Metropolitan Steamship Company, a corporation organized during the year 1910 and now existing under the laws of the State of Maine, said real estate hereinafter described, for Three Hundred and Fifty Thousand Dollars ($350,000.), to be paid in such bonds of said Metropolitan Steamship Company, a corporation of New Jersey, at par, and to be delivered under the terms of said indenture of mortgage to said American Trust Company, as Trustee; and

*Exhibit C. 55.*

WHEREAS, contemporaneously with the delivery hereof there has been paid to said American Trust Company, as Trustee, the proceeds of said sale by the delivery to the Trustee of such bonds of said Metropolitan Steamship Company, at par, to the amount of such sale, to wit, to the amount of Three Hundred and Fifty Thousand Dollars ($350,000.):

NOW, THEREFORE, in consideration of said payment, pursuant to the terms of said indenture of mortgage, said Metropolitan Steamship Company, a corporation of New Jersey, and said American Trust Company, Trustee as aforesaid, hereby remise, release, convey, confirm, transfer and set over unto the said Metropolitan Steamship Company, a corporation of Maine, and its successors and assigns forever, a certain tract of lands and flats with the wharves, buildings and structures thereon, known as Union Wharf property, situated in Boston in the County of Suffolk and Commonwealth of Massachusetts, bounded and described as follows:

Northwesterly on Commercial Street about three hundred and sixty-four and thirty-five hundredths (364.35) feet; northeasterly on land, dock and flats now or formerly of the Lincoln Wharf Company five hundred and fifty-five and seventy-five hundredths (555.75) feet; easterly on the harbor line four hundred and sixty-two and forty-two hundredths (462.42) feet, and southwesterly on land now or late of the proprietors of Sargents Wharf, in part by a line measuring three hundred and three and seventy-five hundredths (303.75) feet, as established by an indenture recorded with Suffolk Deeds, Lib. 414, Fol. 168, and in part by two lines as established by an indenture recorded with said

*Exhibit C. 55.*

Deeds, Lib. 545, Fol. 278, one measuring one hundred and twenty-four and fifty hundredths (124.50) feet, the other measuring two hundred and seven and fifty-five hundredths (207.55) feet, or however otherwise said premises may be bounded or described, and be all or any of said measurements more or less. Being the premises conveyed to the Metropolitan Steamship Company, a corporation organized under the laws of the Commonwealth of Massachusetts (hereinafter called the Massachusetts Company), by deed of Joseph D. Dilworth dated February 7, 1900, duly recorded Lib. 2664, page 159, and deed of Robert Codman et al., Trustees, duly recorded Lib. 2667, page 333; and deed of Union Wharf Company dated February 15, 1900, duly recorded in Lib. 2668, page 214; and deed of Henry M. Whitney dated May 12, 1904, duly recorded Lib. 2967, page 489; and deed of the Massachusetts Company to John Brophy dated May 16, 1905; and deed of John Brophy to the Metropolitan Steamship Company, a corporation organized under the laws of the State of Maine, dated May 16, 1905, said two last mentioned deeds being duly recorded with Suffolk Deeds. Said Union Wharf premises are conveyed with the benefits of the right and privileges referred to in the deeds above mentioned, and under all licenses heretofore granted by the Board of Harbor and Land Commissioners affecting the same; a part of said Union Wharf premises being subject to a lease expiring March 1, 1919, of the J. L. Kelso Warehouse Company at an annual rental of Ten Thousand Dollars ($10,000), payable monthly; and said wharf premises being further subject to a mortgage given by the Massachusetts Company to the Massachusetts Hospital Life Insur-

*Exhibit C. 55.*

ance Company for the sum of Five Hundred Thousand Dollars ($500,000), dated March 1. 1905, and recorded in Suffolk Deeds, Lib. 3025, page 504;

To Have and to Hold the same to the said Metropolitan Steamship Company, a corporation of Maine, its successors and assigns, to their own use and behoof, forever.

The said American Trust Company joins in this deed with the intent to release said real estate from the lien of said indenture of mortgage dated November 15, 1909, but this release shall not in any way affect or impair the right of said American Trust Company, as Trustee, to hold under the said indenture of mortgage as security for the sum remaining due thereon, or to sell under the power of sale in said indenture of mortgage contained, all the remainder of the premises now subject to said mortgage and not hereby released.

In Witness Whereof, the Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, and said American Trust Company, Trustee as aforesaid, have severally caused their corporate seals to be hereto affixed, and these presents to be executed by their corporate officers thereunto duly authorized, on this 17th day of June, 1910.

METROPOLITAN STEAMSHIP COMPANY,

(Signed) By J. Turner Grieve,
*President.*

(M. S. S. Co.)
(seal.)

Attest:

(Signed) Douglas Nicholson,
*Secretary.*

*Exhibit C. 56.*

AMERICAN TRUST COMPANY,

(Signed) By R. G. Fessenden,
*President.*

Attest:
(Signed) C. H. Bowen,
*Secretary.*

10

## Exhibit C. 56.

Letter, Maine Co. (No. 2) to American Trust Company, June 29, 1910.

Boston, June 29, 1910.

American Trust Company, Trustee under Mortgage of the Metropolitan Steamship Company of New Jersey, dated Nov. 15, 1909,
50 State St.,
Boston, Mass.

20

Gentlemen:

We beg to acknowledge receipt of Deed of Union Wharf property duly executed on the part of the Metropolitan Steamship Company of New Jersey and the American Trust Company, as Trustee, the consideration therefor to the Metropolitan Steamship Company of New Jersey being accounted therefor by the surrender to you as Trustee, as aforesaid, by the undersigned of Three Hundred and Fifty Thousand Dollars ($350,000) par value First Mortgage Five Per Cent. Bonds of the Metropolitan Steamship Company of New Jersey issued under mortgage of said Company to the American Trust Company, Trustee, dated November 15, 1909.

30

Very truly yours,
METROPOLITAN STEAMSHIP COMPANY,
(OF MAINE)
By
(Signed) B. S. Case,
*Treasurer.*

40

## Exhibit C. 57.

Letter, American Trust Company to Maine Co. (No. 2) June 29, 1910.

Metropolitan Steamship Co.,
Mr. B. E. Case, Treasurer,
Boston.

Dear Sir:

The American Trust Company, as Trustee under Mortgage of the Metropolitan Steamship Company of New Jersey dated Nov. 15, 1909, hereby acknowledges the receipt of Three Hundred and Fifty Thousand Dollars ($350,000) par value First Mortgage Five Per Cent. Bonds of the Metropolitan S. S. Company of New Jersey issued under Mortgage of said Company to the American Trust Company, as Trustee, dated Nov. 15, 1909, said Bonds having coupons due July 1, 1910, and subsequent attached.

Very truly yours,

AMERICAN TRUST COMPANY, Trustee,
(As aforesaid)

By

*Secretary.*

## Exhibit C. 61.

Request for release of India Wharf.

METROPOLITAN STEAMSHIP COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, hereby, under and in accordance with Section 1 of Article IX of its indenture of mortgage dated the 15th day of November, one thousand nine hundred and nine, to American Trust Com-

*Exhibit C. 61.*

pany, as Trustee, hereby requests in writing American Trust Company, as Trustee under said mortgage, without consideration paid to it, to release from the lien or operation of said indenture of mortgage all of the right, title and interest of Metropolitan Steamship Company in, to or under a certain indenture of lease dated June 1, 1889, between the Central Wharf and Wet Dock Corporation of Massachusetts and the Metropolitan Steamship Company, a Massachusetts corporation, of India Wharf in Boston, Massachusetts, so that the same may be transferred by Metropolitan Steamship Company free and clear of any trust or lien created by said indenture of mortgage, and so that Metropolitan Steamship Company may sell such interest in such indenture of lease and receive the purchase price free and clear from any trust or lien created by said indenture of mortgage.

In Witness Whereof, Metropolitan Steamship Company has caused this instrument to be executed by its President and its corporate seal, attested by its Secretary, to be hereto affixed, on this 15th day of May, 1911.

METROPOLITAN STEAMSHIP COMPANY,

(Signed) By Thomas C. Hughes,
*President.*

Attest:
(Signed) R. T. Martinsen,
*Secretary.*

SEAL.

*Exhibit C. 62.*

## Exhibit C. 62.

Certificate of Metropolitan S. S. Co. of New Jersey *in re* release of India Wharf.

I, the undersigned, hereby certify that at a meeting of the Board of Directors of the Metropolitan Steamship Co. of N. J., duly held at No. 30 Church Street, in the Borough of Manhattan, City of New York, on the 11th day of May, 1911, at 10 o'clock in the forenoon, the following vote was duly passed:

"VOTED: That this Company make a request upon the American Trust Company, as Trustee, for a release from the lien of its First Mortgage of all the right, title and interest of this Company in, to and under an indenture of lease of India Wharf in Boston, Massachusetts, and that the following instrument be executed by the President under the corporate seal of this Company, attested by the Secretary, and forwarded to said American Trust Company, as Trustee:

"METROPOLITAN STEAMSHIP COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, hereby, under and in accordance with Section 1 of Article IX of its indenture of mortgage, dated the 15th day of November, one thousand nine hundred and nine, to American Trust Company, as Trustee, hereby requests in writing American Trust Company as Trustee under said mortgage, without consideration paid to it, to release from the lien or operation of said indenture of mortgage all of the right, title and interest of Metropolitan Steamship Company in, to or under a certain indenture of lease dated June 1, 1889, between the Central Wharf and Wet Dock Corpor-

*Exhibit C. 62.*

ation of Massachusetts and the Metropolitan Steamship Company, a Massachusetts corporation, of India Wharf in Boston, Massachusetts, so that the same may be transferred by Metropolitan Steamship Company free and clear of any trust or lien created by said indenture of mortgage, and so that Metropolitan Steamship Company may sell such interest in such indenture of lease and receive the purchase price free and clear from any trust or lien created by said indenture of mortgage.

IN WITNESS WHEREOF Metropolitan Steamship Company has caused this instrument to be executed by its President and its corporate seal, attested by its Secretary, to be hereto affixed, on this day of May, 1911.

METROPOLITAN STEAMSHIP COMPANY,

By _____

*President.*

Attest:

_____

*Secretary.*

Attested by

SEAL (Sgd) R. T. MARTINSEN,
*Secretary.*

*Exhibits C. 63, C. 64.*

## Exhibit C. 63.

Letter, Metropolitan S. S. Co. of New Jersey to American Trust Company, June 10, 1911.

METROPOLITAN STEAMSHIP COMPANY,
Office of the Treasurer
30 Church Street.

R. T. Martinsen,
Treasurer.

New York, June 10, 1911.

American Trust Company,
#50 State Street,
Boston, Mass.

Dear Sir:

I acknowledged receipt of your letter of June 9th, enclosing release in the matter of India Wharf, which has been executed by your company, and thank you for same.

Very truly yours,

(Signed) R. T. MARTINSEN,
*Treasurer.*

RTM/C

## Exhibit C. 64.

Release of India Wharf.

WHEREAS Metropolitan Steamship Company, a corporation duly organized and existing under the laws of the State of New Jersey, heretofore executed and delivered to American Trust Company, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, as Trustee, a first mortgage dated November 15, 1909, and in Section 1 of

*Exhibit C. 64.*

Article IX of said mortgage it is provided that the American Trust Company shall upon the written request of Metropolitan Steamship Company, signed in its behalf by its president or a vice-president or by its secretary, without consideration paid to it, release from lien or operation of said mortgage all of the right, title and interest of Metropolitan Steamship Company in, and under a certain indenture of lease dated June 1, 1889, between the Central Wharf and Wet Dock Corporation of Massachusetts and the Metropolitan Steamship Company, a Massachusetts Corporation, of India Wharf in Boston, so that the same may be transferred by Metropolitan Steamship Company free and clear of any trust or lien created by said mortgage and Metropolitan Steamship Company may sell said interest in said indenture of lease and receive the purchase price free and clear from any trust or lien created by said mortgage;

And Whereas said Metropolitan Steamship Company has made a written request of the nature and form provided for in said section of said mortgage for said release;

Now, Therefore, in consideration of the premises and of One Dollar paid to American Trust Company by Metropolitan Steamship Company, the receipt of which is hereby acknowledged, American Trust Company hereby remises, releases and quitclaims to Metropolitan Steamship Company all right, title and interest held by Metropolitan Steamship Company at the execution and delivery of said mortgage in, to or under a certain indenture of lease dated June 1, 1889, between the Central Wharf and Wet Dock Corporation of Massachusetts and the Massachusetts Company, of India Wharf in Boston,

*Exhibit C. 64.*

Massachusetts, at the rental therein stated, said lease running for the term of twenty years from said date, which lease on or about the 26th day of April, 1905, was extended for the period of ten years from the expiration thereof, said lease having been assigned by the Massachusetts Company to the Maine Company and sold under the foreclosure of the first mortgage of the Maine Company, the intent of this instrument being to release such right, title and interest from the lien or operation of said first mortgage to American Trust Company, so that such right, title and interest may be transferred by Metropolitan Steamship Company free and clear of any trust or lien created by said mortgage and Metropolitan Steamship Company may sell its interest in said indenture of lease and receive the purchase price free and clear from any trust or lien created by such mortgage.

Nothing contained in this instrument shall in any way effect or impair the right of said American Trust Company as trustee to hold under the said indenture or mortgage as security for the sum remaining due thereon or to sell under the power of sale in said indenture of mortgage contained all the remainder of the property now subject to said mortgage and not hereby released.

In Witness Whereof American Trust Company has caused this instrument to be executed by its president or a vice-president and its cor-

*Exhibit C. 66.*

porate seal, attested by its secretary, to be hereto affixed on this ninth day of June, 1911.

(Corporate Seal)

AMERICAN TRUST COMPANY,

By

(Signed) R. G. FESSENDEN,
*President.*

Signed, sealed and delivered
in presence of

(Signed) EUGENE W. LEIGHTON
" LAWRENCE H. MERCHANT

Attest:

(Signed) C. H. BOWEN,
*Secretary.*

**Exhibit C. 66.**

Certificate as to Directors of Metropolitan S. S. Co. of New Jersey.

I hereby certify that
John W. McKinnon
George E. Shaw
Edward B. Wire

constitute the Board of Directors of the METROPOLITAN STEAMSHIP COMPANY (of New Jersey).

(Signed) CAMPBELL CARRINGTON
*Secretary of the*
*Metropolitan Steamship Company.*

SEAL

*Exhibit C. 67.*

## Exhibit C. 67.

Letter, American Trust Company to McKinnon, May 25, 1910.

(Copy.)

Mr. John W. McKinnon,
25 Broad St.,
New York, N. Y.

DEAR SIR:

As requested by our President, Mr. Fessenden, I enclose herewith the bill of the American Trust Company for services and expenses in connection with the release of the Freight Steamers from under the Mortgage of the Metropolitan Steamship Company of New Jersey, to the American Trust Company, Trustee, dated November 15, 1909. Also bills of Messrs. William A. Sargent and Mr. Elmer P. Howe, our Attorneys.

When the bills of Mr. Fletcher and Mr. Eldridge have been paid, will you kindly obtain from them a letter addressed to us to the effect that they have received payment therefor, and will you also kindly obtain from Mr. Calvin Austin a similar letter or waiver of any charges against the American Trust Company as Trustee, account his appraisal.

Very truly yours,

CHB/M
(Encls.)

*Secretary.*

*Exhibits C. 68, C. 69.*

## Exhibit C. 68.

Letter, American Trust Company to Assets Realization Company, June 13, 1910.

(Copy.)

June 13, 1910.

Assets Realization Company,
Mr. John W. McKinnon, Vice President.
25 Broad St.,
New York, N. Y.

DEAR SIR:

Referring to our letter of the 25th ultimo on the subject matter of fees and expenses in connection with release of freight steamers of the Metropolitan Steamship Company of New Jersey, we respectfully ask when we may reasonably expect to receive check in settlement of the bills; also the letters from the three appraisers referred to in our letter.

Very truly yours,

CHB-NCR *Secretary.*

## Exhibit C. 69.

Letter, McKinnon to American Trust Company, June 14, 1910.

(Copy.)

ASSETS REALIZATION COMPANY

New York City, June 14, 1910.

C. H. Bowen, Esq., Sec.,
American Trust Co.,
50 State St., Boston, Mass.

DEAR SIR:

Replying to your favor of the 13th, relative to the matter of fees and expenses against the

*Exhibit C. 70.*

Metropolitan Steamship Company, I beg to say that about a week ago we handed over to the new treasurer, Mr. Douglas Nicholson, 203 Broadway, New York City, the balance of cash in our hands together with the bills of the American Trust Company and their attorneys, with the request that they be taken care of promptly. I have today written Mr. Nicholson calling his attention to the fact that the bills have not been paid.

Yours very truly,

JWMcK/L J. W. McKINNON.

## Exhibit C. 70.

Letter, American Trust Company to Metropolitan S. S. Co. of New Jersey, June 22, 1910.

(Copy.)

Mr. Douglas Nicholson, Treas.,
Metropolitan Steamship Co. of New Jersey,
203 Broadway, New York, N. Y.

DEAR SIR:

On the 25th ultimo, we forwarded to Mr. McKinnon, bill of the American Trust Company for services and expenses in connection with the release of the Freight Steamers from under the Mortgage of the Metropolitan Steamship Company of New Jersey, also bills of Messrs. William A. Sargent and Elmer P. Howe, our Attorneys.

We are informed by Mr. McKinnon that the bills and our letter to him, of which we enclose a copy, were referred to you for attention.

We would respectfully ask when it will be convenient for you to send us check in settlement of the bills, also to obtain and send to

*Exhibit C. 71.*

us the letters asked for in the latter part of our letter to Mr. McKinnon.

Thanking you in advance, we beg to remain,

Yours very truly,

CHB/M *Secretary.*

(Encl.)

## Exhibit C. 71.

Letter, American Trust Company to Robbins, June 27, 1910.

(Copy.)

June 27, 1910.

*Re-Release Union Wharf, Metropolitan Steamship Company.*

Mr. E. D. Robbins, Counsel,
c|o New York, New Haven & Hartford R. R. Co.,
New Haven, Conn.

DEAR SIR:—

Confirming conversation over the 'phone with our Mr. Fessenden to-day, we have received an appraisal of the Union Wharf Property as appraised by Messrs. Charles W. Whittier and Joseph B. Russell and we are prepared to execute the release upon the surrender of Three Hundred Fifty Thousand Dollars ($350,000.) Bonds, consideration therefor, and the assurances that our bills for services, including the bills of our Attorneys Messrs. E. P. Howe and W. A. Sargent in connection with the old release, and this release, will be paid. Also confirmation that the bills of Messrs. Fletcher and Eldridge, in connection with the old release, have been paid, and letter from Mr. Austin

*Exhibit C. 72.*

that he has no charges in connection with his appraisal.

We think it only proper that you should know the amount of the unpaid charges exclusive of the bills of Messrs. Fletcher, Eldridge and Austin above referred to, i. e.

Old release; fee of Trustee and expenses $597.50
Bills of E. P. Howe and W. A. Sargent 650.00
Fees for appraisal Union Wharf Property 830.00
Fees as Trustee ..... 300.00

The bills of Messrs. Fletcher and Eldridge for their services of appraisal of the old freight steamers were respectively, $350.00 and $50.00.

We further understand that we are to be furnished, in connection with the release now under consideration, with a certificate or certified extracts from the records showing election of the Directors of the Metropolitan Steamship Company, showing that the three Directors signing the affidavit were, at the time of such signing, bona fide Directors.

Very truly yours,

CHB./M. *Secretary.*

## Exhibit C. 72.

Letter, American Trust Company to Robbins, June 28, 1910.

*Re-Release Union Wharf, Metropolitan Steamship Co.*

June 28.

Mr. E. D. Robbins, Counsel,
New York, New Haven & Hartford R. R. Co.
New Haven, Conn.

Dear Sir:

In our letter of yesterday on the above subject, which was written in considerable haste,

*Exhibit C. 73.*

we omitted to state that at the time of writing we were unable to get from our Attorney his charges in connection with this release. These charges would of course, be in addition to those enumerated in our letter.

Very truly yours,

CHB./M *Secretary.*

## Exhibit C. 73.

Letter, American Trust Company to Robbins, July 7, 1910.

(Copy.)

July 7, 1910.

Mr. E. D. Robbins, Counsel,
New York, New Haven & Hartford
Railroad Co.,
New Haven, Conn.

Dear Sir:

We enclose herewith duplicate of bill sent this day by us to Mr. Douglas Nicholson, Treasurer of the Metropolitan Steamship Company of New Jersey, and in consideration of your agreement at the time of the last release, that all of our bills and expenses in connection with this release and release of the Freight Steamers would be promptly paid, we would respectfully ask that you give instructions for early remittance.

There has always been a question as to whether or not Mr. Calvin Austin was to render a bill for his appraisal and we must have assurance from him in writing that he has no charge, or that his charges have been paid by you.

*Exhibit C. 74.*

Thanking you in advance for courtesies extended, we beg to remain,

Very truly yours,

CHB/M
(Encl.)

*Secretary.*

## Exhibit C. 74.

Letter, American Trust Company to Metropolitan S. S. Co. of New Jersey, July 7, 1910.

(Copy.)

Mr. Douglas Nicholson, Treasurer,
Metropolitan Steamship Co. of New Jersey,
203 Broadway, New York, N. J.

Dear Sir:—

We enclose herewith bill covering our services and expenses in connection with the release of the Freight Steamers and also the release just given of the Union Wharf property.

Our understanding with Mr. Robbins was that these bills would be promptly paid and we would thank you if you will communicate with Mr. Robbins to the end that we may have early remittance therefor.

Thanking you in advance for the courtesy, we beg to remain

Very truly yours,

CHB/M
(Encl.)

*Secretary.*

## Exhibit C. 75.

Letter, Kelley to American Trust Company, July 12, 1910.

(Copy.)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD CO.

Office of
General Counsel

New Haven, Conn., July 12, 1910.

Charles H. Bowen, Esq.,
Secretary, American Trust Co.,
50 State Street, Boston, Mass.

Dear Sir:

Your letter to Mr. Robbins duly received, but he is at present away from New Haven.

The letter will be called to his attention as soon as he returns.

Very truly yours,
J. T. KELLY,
*Secretary.*

REC'D JUL 14 1910
Ans'd by 7/14
CHB EWL

*Exhibit C. 76.*

## Exhibit C. 76.

Letter, Kelley to American Trust Company, July 15, 1910.

(Copy.)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD CO.

Office of
General Counsel

New Haven, Conn., July 15, 1910.

Mr. Charles H. Bowen, Secretary,
American Trust Company,
50 State St., Boston.

Dear Sir:

I have your letter of July 14th. inquiring as to the probable date of Mr. Robbins' return to New Haven.

The latest advice from Mr. Robbins was to the effect that he would be here during the latter part of next week.

Very truly yours,

J. T. KELLY,
*Secretary.*

REC'D JUL 16 1910

*Exhibits C. 77, C. 78.*

## Exhibit C. 77.

Letter, Metropolitan S. S. Co. of New Jersey to American Trust Company, July 19, 1910.

(Copy.)

METROPOLITAN STEAMSHIP COMPANY.

New York, July 19, 1910.

Messrs. American Trust Company,
53 State St.,
Boston, Mass.

Gentlemen:—

Enclosed herewith please find our check to your order for the sum of $2,802.50, in payment of the enclosed bill for your services and disbursements in connection with the release of the Freight Boats, the Supplemental Mortgage covering the "Yale" and "Harvard," and the release of the Union Wharf Property.

Very truly yours,

DOUGLAS NICHOLSON,
*Treasurer.*

DN/T

## Exhibit C. 78.

Letter, American Trust Company to Metropolitan S. S. Co. of New Jersey, July 20, 1910.

(Copy.)

July 20, 1910.

Metropolitan Steamship Company,
Mr. Douglas Nicholson, Treasurer,
203 Broadway,
New York, N. Y.

Dear Sir:

We beg to acknowledge receipt of your favor of the 19th instant, enclosing check for $2802.50

*Exhibit C. 79.*

in payment of the enclosed voucher, and thank you very much for the remittance.

To complete our files, we shall require from Mr. Calvin Austin a letter to the effect that his bill for services in connection with the appraisal of the freight boats has been settled, or to the effect that he has no charge for such service. If you will give this matter your attention, you will greatly oblige,

Yours very truly,

*Secretary.*

XE
EWL-NCR
(ENC.)

## Exhibit C. 79.

Letter, American Trust Company to Metropolitan S. S. Co. of New Jersey, August 2, 1910.

Copy.

August 2, 1910.

Metropolitan Steamship Company,
Mr. Douglas Nicholson, Treasurer,
203 Broadway,
New York, N. Y.

Dear Sir:

Referring to our letter of July 20th, would advise that we have not as yet received from Calvin Austin, letter to the effect that his bill for services in connection with the appraisal of freight boats has been settled, or that he had no charge for such service. Will you kindly give this your attention, and oblige,

Yours very truly,

WCW-NCR

*Asst. Secretary.*

Hold

*Exhibits C. 80, C. 81.*

## Exhibit C. 80.

Letter Metropolitan S. S. Co. of New Jersey to American Trust Company, August 3, 1910.

(Copy.)

METROPOLITAN STEAMSHIP COMPANY

New York, August 3, 1910.

The American Trust Company,
50 State Street,
Boston, Mass.

Gentlemen:—

Replying to your favor of the 2nd instant with reference to Mr. Austin's services in connection with the appraisal of Freight Boats, we shall try to obtain the desired letter for you as soon as possible.

Very truly yours,
DOUGLAS NICHOLSON,
*Treasurer.*

REC'D AUG. 4, 1910.

## Exhibit C. 81.

Letter, Austin, President, to American Trust Company, August 10, 1910.

METROPOLITAN STEAMSHIP COMPANY

Boston, August 10, 1910.

Mr. R. G. Fessenden,
President, American Trust Co.,
Boston, Mass.

My dear Mr. Fessenden:—

Referring to the attached correspondence:

I shall not make any charge for what little I did in appraising the freight steamers and equipment of the Metropolitan Steamship Company.

Yours truly,
(Sgd) CALVIN AUSTIN,
*President.*

*Exhibits C. 82, C. 83.*

## Exhibit C. 82.

Letter, Nicholson to Chase, August 3, 1910.

BEALS & NICHOLSON
203 BROADWAY, NEW YORK.

Aug. 3, 1910.

Warren D. Chase, Esq.,
North Hatley,
Quebec, Canada.

Dear Chase:—

I am today in receipt of advice from the American Trust Company that they have not yet received from Mr. Calvin Austin, a letter to the effect that his bill for services in connection with the appraisal of the Freight Boats has been paid or that he has no charge for such service, and that it requires such a letter.

Very truly yours,
(Sgd) DOUGLAS NICHOLSON.

## Exhibit C. 83.

Letter, Robbins to Austin, President, August 9, 1910.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD CO.

New Haven, Conn.,
August 9, 1910.

Mr. Calvin Austin, President,
Metropolitan Steamship Co.,
India Wharf, Boston.

Dear Mr. Austin:

I enclose a letter which I have just received, which explains itself.

*Exhibit C. 84.*

I shall be obliged if you will satisfy the American Trust Company in this matter.

Very truly yours,

(Sgd) EDWARD D. ROBBINS.

## Exhibit C. 84.

Letter, McKinnon to Fessenden, November 16, 1909.

(Copy.)

ASSETS REALIZATION COMPANY

New York City, Nov. 16, 1909.

R. G. Fessenden, Esq.,
53 State Street,
Boston, Mass.

Dear Mr. Fessenden:

*Re Metropolitan Steamship Co. Reorganization.*

Referring to your letter of the 13th inst., we will not be able to give the certificate of the Secretary of Metropolitan Steamship Company that the new company has been formed in accordance with the original plan, namely,

$3,000,000—Thirty Year 5% Bonds.
500,000—Two Year 5% Gold Notes.
3,000,000—Common Stock,

because the original plan has been amended by agreement with all the unsecured creditors who assented to the original plan, and who are to receive under the amendment agreed to Ten Year Notes for the face amount of their claims.

It has been our understanding that your Committee consented to the amendment, conditioned on receiving cash in lieu of the $124,150, par value, of stock of the new company, which was

*Exhibit C. 86.*

to have been distributed among your depositing bondholders.

We can give you a certificate that the company has been formed with the plan amended in the manner above stated.

I understood from you that, if Mr. Murray and Mr. Williams asented to this change, it made no difference to you.

Mr. Swift, of the firm of Underwood, Van-Vorst & Hoyt, will be with Mr. Sargent tomorrow and I would like you to take this matter up with him and dispose of it.

Yours very truly,

J. W. McKINNON.

## Exhibit C. 86.

Letter, American Trust Company to Robbins, June 23, 1910.

June 23, 1910.

Mr. Edward D. Robbins,
739 Main St.,
Hartford, Conn.

Dear Sir:

I am in receipt of your favor of the 22nd, and in reply would say that I have ascertained that Mr. Howe will be in his office Friday morning and can see us any time it is convenient for us.

I do not really see the need of having him at the conference, as it appears to me to be simply a valuation of the wharf. The legal details I understand have been taken up by my secretary, Mr. Bowen, and have either been arranged with Mr. Howe or will be shortly. However, if you desire to have Mr. Howe present at the confer-

*Exhibit C. 87.*

ence, kindly let me know early in the morning what time to have him. I should like, if possible, to arrange it before one o'clock.

Very truly yours,

*President.*

10

## Exhibit C. 87.

Letter, Robbins to American Trust Company, June 22, 1910.

Law Offices of
EDWARD D. ROBBINS
739 Main St.,
Hartford, Conn.

20 New Haven, Conn., June 22, 1910.

Mr. Russell G. Fessenden,
President, American Trust Co.,
Boston, Mass.

Dear Sir:

I expect to be in Boston Friday morning, and shall be very much obliged if you can arrange to have your counsel, Mr. Howe, available for conference about the Union Wharf matter.

30 Very truly yours,
(Sgd) EDWARD D. ROBBINS.

40

*Exhibits C. 88, C. 89.*

## Exhibit C. 88.

Letter, American Trust Company to Robbins, July 5, 1910.

AMERICAN TRUST COMPANY

July 5, 1910.

Mr. Edward E. Robbins,
Boston, Mass.

Dear Mr. Robbins:

Just a line to remind you about getting for us the certificate of the election of the Directors of the Metropolitan S. S. Co. of New Jersey about which I spoke to you today.

Yours very truly,

*President.*

## Exhibit C. 89.

Letter, American Trust Company to Robbins, October 8, 1910.

Oct. 8, 1910.

Mr. E. D. Robbins,
c/o N. Y. N. H. & H. R. R.,
New Haven, Conn.

Dear Sir:

If possible I would like very much to see you in regard to the sending of the "Yale" and "Harvard" to the California coast. It seems possible that some of the bondholders may institute legal proceedings, which I want very much to avoid, as it places us as Trustee in an awkward position. I thought if I could see you and talk matters over with you I might be abl to straighten matters out with these bondholders

*Exhibit C. 90.*

and avoid any litigation, which I sincerely want to do.

If you could arrange a conference with me I should appreciate it very much.

Very truly yours,

*President.*

## Exhibit C. 90.

Letter, Robbins to American Trust Company, October 12, 1910.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.

Office of
General Counsel.

New Haven, Conn., Oct. 12, 1910.

Mr. R. G. Fessenden, President,
American Trust Company,
Boston, Mass.

Dear Mr. Fessenden:

Your letter of October 8th I find on my desk. This is the first day for a week that I have been in my office.

I shall be very glad to call on you, and will do so at the first opportunity. I may not be able to get to Boston this week, owing to the stress of business, but in that case I expect to be in Boston next Monday.

Very truly yours,

(Signed) EDWARD D. ROBBINS.

*Exhibits C. 91, C. 92.*

## Exhibit C. 91.

Letter, American Trust Company to Robbins, October 13, 1910.

AMERICAN TRUST COMPANY.

Oct. 13, 1910.

Mr. E. D. Robbins,
New Haven, Conn.

Dear Mr. Robbins:

I wish to thank you for your favor of the 12th, and am just dropping a line to say that I shall not be in Boston Saturday of this week but shall be glad to see you any other day which may be convenient to you.

Very truly yours,

*President.*

## Exhibit C. 92.

Letter, Austin, President, to American Trust Company, October 13, 1910.

(Copy.)

METROPOLITAN STEAMSHIP COMPANY
India Wharf

Boston, Oct. 13, 1910.

My dear Mr. Fessenden:
President, American Trust Co.,
50 State Street, Boston.

Mr. dear Mr. Fessenden:

I am in receipt of a letter from Mr. Edward D. Robbins, Attorney for the Metropolitan Steamship Company, asking me to write you, stating that I will make no charge for services as

*Exhibit C. 93.*

appraiser on the boats of the Metropolitan Steamship Company of Maine.

I, herewith, enclose you a copy of my letter to you August 10th.

Yours truly,

*President.*

A/S
Enc.

REC'D OCT. 14, 1910.

## Exhibit C. 93.

Letter, Metropolitan S. S. Co. of New Jersey to Watt, December 3, 1909.

(Copy.)

William C. Watt, Esq.,
c/o American Trust Company,
53 State Street, Boston, Mass.

Dear Sir:

Pursuant to resolutions adopted at special meetings of the directors and stockholders of Metropolitan Steamship Company, held respectively on November 29th and December 2nd, 1909, a decrease of the capital stock of Metropolitan Steamship Company from $3,000,000. par value to $1,500,000 par value was authorized, the decrease to be effected by the purchase and cancellation of $1,500,000 par value of the capital stock of the Company at a price not in excess of par, payment to be made therefor in notes of the Company, dated November 15th, 1909, and payable without interest November 15th, 1919, or before any dividend can be paid upon the capital stock of the Company.

*Exhibit C. 94.*

The President and Treasurer of the Company were authorized to issue and deliver said notes and to offer to the stockholders of the Company the privilege of surrendering their shares of stock ratably to the extent of 15,000 shares in all, each stockholder to have the privilege of surrendering fifty per cent. of his holdings of stock and to receive and accept therefor notes of the Company of a par value equal to the par value of the stock so surrendered.

Pursuant to the resolutions adopted at said special meetings the undersigned hereby extends to you the privilege for five days from receipt of this notice, to present and deliver fifty per cent. of the shares of stock now held by you for the purpose of retirement, and upon the surrender by you of such shares of stock the undersigned will issue and deliver to you notes of the Company of the character described above.

Yours very truly,

CAMPBELL CARRINGTON,
*Treasurer.*

## Exhibit C. 94.

Memorandum American Trust Company *in re* $1,000,000 of bonds.

MEMORANDUM

Re— $1,000,000. BONDS METROPOLITAN STEAMSHIP COMPANY SURRENDERED TO TRUSTEE, ACCOUNT RELEASES.

| | Amount | Numbers | Bonds Originally Delivered to |
|---|---|---|---|
| $ | 5,000. | 38/42 | Assets Realization Co., N. Y. 25 Broad |
| | 15,000. | 288/302 | W. & A. Fletcher Co., Hoboken, N. J. |
| | 104,000. | 324/427 | H. T. Graf, New York, 25 Broad St. |
| | 1,000. | 514 | R. P. Jackson, Equitable Trust Co., N.Y. |

New Jersey State Library

*Exhibit C. 95.*

| | | |
|---|---|---|
| 50,000. | 617/666 | J. W. McKinnon, Shareholders' Agent, National Bank of North America, N. Y. |
| 42,000. | 729/770 | Edward F. Murray, Troy, N. Y. |
| 50,000. | 841/890 | Peoples Trust Co., Brooklyn, N. Y. |
| 193,000. | 1211/1241 | Hudson Navigation Co., Troy, N. Y. |
| | 1492/1616 | |
| | 1642/1662 | |
| | 1668/1672 | |
| | 1684/1694 | |
| 118,000. | 1707/1802 | John W. McKinnon, New York, 25 |
| | 1807/1828 | Broad St. |
| 422,000. | 2485/2906 | *Ladenburg, Thalmann & Co., New York |

$1,000.000.

*The temporary bonds exchanged for these permanent bonds originally delivered to John W. McKinnon.

## Exhibit C. 95.

Memorandum, Robbins to Fernald.

(Copy.)

The steamers Yale and Harvard have had an excellent season and it has been determined instead of laying them up for eight months to deteriorate at a dock, to use them during the Winter on the Pacific Coast, where a large business is awaiting vessels of such a type. They It is expected that they will earn enough a good balance over and above all operating expenses including the expense of the voyage around now and also of the voyage back in the spring, if it is decided to bring them back for next summer's business between New York and Boston.

*Exhibits C. 96, C. 97.*

## Exhibit C. 96.

Letter, Fernald to Robbins, April 28, 1911.

April 28, 1911.

Edward D. Robbins, Esq.,
New York, New Haven & Hartford R. R. Co.,
New Haven, Conn.

Dear Mr. Robbins:

The enclosed newspaper clipping in relation to libel of the steamer "Harvard" by John A. Robbins Co., of New York to cover $10,863. for repair work before the vessel left for the Pacific Coast, is leading to inquiries from bondholders.

I conclude you are conversant with the situation and can inform us, and I would like very much to have you do so. If convenient and agreeable for you to see me the next time you are in Boston, I will be pleased to have you advise me when you expect to be here.

Yours very truly,

GAF/RM

## Exhibit C. 97.

Letter, Robbins to Fernald, May 1, 1911, with newspaper clipping.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

Office of
General Counsel

New Haven, Conn.,
May 1, 1911.

George A. Fernald, Esq.,
67 Milk St.,
Boston, Mass.

Dear Mr. Fernald:

I have your letter of April 28th, and shall be glad to see you at the first mutually convenient occasion.

*Exhibit C. 98.*

My understanding is that the suit of John A. Robins & Company grows out of a dispute as to the amount of the bill. I am told that all those who have looked at it consider it an excessive bill. I have no personal knowledge about the matter.

Very truly yours,

(Signed) EDWARD A. ROBBINS.

(*Newspaper Clipping*)

STEAMER HARVARD LIBELLED.

JOHN A. ROBINS CO. Seeks $10,863 for repair work.

SAN FRANCISCO, April 25th.—The John A. Robins Co. of New York has filed a libel against the crack coaster Harvard in the United States District Court to recover $10,863, representing repair work done at New York before the vessel left for this coast. The bill states that the repairs were made at the request of the Metropolitan SS. Co., to which the Harvard was intrusted when the work was done.

## Exhibit C. 98.

Operating agreement between Metropolitan S. S. Co. of New Jersey and Maine Company (No. 2), dated March 5, 1910.

AGREEMENT, between METROPOLITAN STEAMSHIP COMPANY, a corporation organized and existing under the Laws of the State of New Jersey, (Hereinafter referred to as the "New Jersey Corporation"), and METROPOLITAN STEAMSHIP COMPANY, a cor-

*Exhibit C. 98.*

poration organized during the year 1910 and existing under the Laws of the State of Maine, (hereinafter referred to as Maine corporation"):

The New Jersey corporation and the Maine corporation hereby covenant and agree together as follows:

1. The New Jersey corporation shall deliver to the Maine corporation immediate possession of the real estate in Boston, Massachusetts, known as the India Wharf property which it holds under lease, to be used by the Maine corporation for its own purposes as well as for the accommodation of the steamships "Yale" and "Harvard" for the term of one year from the date hereof; subject, however, to the right of the New Jersey corporation to resume exclusive possession of said property upon thirty days notice to the Maine corporation.

2. The Maine corporation shall pay the rental accruing during its occupation of said India Wharf property to the owner thereof, under said lease, and shall pay all taxes upon any of the said wharf property accruing during its said occupation, and all other charges resulting from the possession and operation of said wharf property which shall accrue during said occupation thereof, and will hold the New Jersey corporation harmless from any loss, cost or damage arising out of or connected with the lease of said India Wharf property or the possession or use thereof. The Maine corporation will also, at its own expense, keep all of said property properly insured against fire during the period of its occupation of said property.

3. The Maine corporation shall cause the steamships "Yale" and "Harvard" to be

*Exhibit C. 98.*

equipped for the use of oil instead of coal as fuel, and shall put said steamships in good repair, and shall manage and operate between the ports of New York and Boston, from the docks and piers which shall be possessed by the Maine corporation in said cities respectively, said steamships "Yale" and "Harvard," during the season of navigation of 1910, so long as such operation shall be profitable, but not later than October 15, 1910, so as to derive the largest possible revenue from the carriage both of passengers and freight and from all other sources available in the course of such operation, and shall during the whole of said season of navigation as above specified, make all ordinary repairs upon said steamships so as to maintain them in good and seaworthy condition.

4. The Maine corporation shall, at the times and in the manner hereinafter stated, pay over to the New Jersey corporation the amount of revenue obtained from said steamships and the operation thereof, less the actual expenses incurred in the course of the operation of said steamships, for outfitting and repairs, for fuel, for the wages of all persons employed on said steamships, for labor in handling freight carried by said steamships, for insurance upon the cargo borne by said steamships, for taxes, and for supplies purchased for said steamships, and also less fifteen per cent. of the revenue remaining after making the above deductions, which fifteen per cent is mutually agreed upon as the compensation of the Maine corporation for the wharfage of the "Yale" and "Harvard" at the docks and piers possessed by the Maine corporation in New York and Boston, and for the management by the Maine corporation of said steamships

*Exhibit C. 98.*

"Yale" and "Harvard" and of the operation thereof, and to cover any additional general expenses in salaries and clerical labor which may be caused to the Maine corporation by the management of said steamships "Yale" and "Harvard," other than the operating expenses above specified as to be deducted from the gross revenue. The Maine corporation shall advance to the New Jersey corporation such sums as shall be necessary in order to enable said New Jersey corporation to pay all premiums on insurance on said steamships for the term of one year from the date of the expiration of the policies now in force, and to pay on July 1, 1910, the interest on the bonds of said New Jersey corporation then due, and shall pay over the balance due under the above provisions to the New Jersey corporation, within one week after said steamships shall stop running for said season.

In Witness Whereof the said parties hereto have caused these presents to be executed by their officers thereunto duly authorized, on this 5th day of March, 1910.

METROPOLITAN STEAMSHIP COMPANY
a corporation of New Jersey

By

Douglas Nicholson,
*Treasurer.*

METROPOLITAN STEAMSHIP COMPANY
a corporation of Maine

By

GROM C. RICHARDS.

## Exhibit C. 99.

Agreement between Eastern S. S. Co. and Maine Company (No. 2), dated January 10, 1912.

AGREEMENT made and entered into this tenth day of January, 1912, by and between the Eastern Steamship Corporation, a corporation organized and existing under the laws of the State of Maine, hereinafter called "Corporation," and Metropolitan Steamship Company, also a corporation organized and existing under the laws of said State, hereinafter called "Company."

IN CONSIDERATION of the mutual agreements of the parties hereinafter contained, said parties hereto agree with each other as follows:

The Company agrees to sell, and does hereby sell, to the Corporation all its franchises, property and assets of every name and nature whatsoever; also its business and good-will of business, cash on hand, book accounts, receivables and choses in action, and agrees to execute such conveyances of its steamships and real estate as shall be proper to convey a good title thereto.

The Corporation agrees to take over said property and business as a going concern, and as part of the consideration for said sale and conveyance, to assume and pay, when and as the same become due and payable, all legal debts and perform all obligations of the Company, and satisfy all legal and proper demands against it on the actual date of the turning over of the property, or arising out of the operation of the business or anything occurring previous to said date.

*Exhibit C. 99.*

And in further consideration of said sale of the property and franchises of the Company, the Corporation agrees to issue and deliver to the stockholders of the Company eight thousand, five hundred (8,500) common shares of the capital stock of the corporation, of the par value of fifty ($50.) dollars each, amounting in the aggregate in the sum of four hundred and twenty-five thousand ($425,000) dollars, and one million, seven hundred thousand ($1,7000,000) dollars par value of the first and refunding mortgage five per cent. bonds of the Corporation, being part of an authorized issue of eight million, five hundred thousand ($8,500,000) dollars secured by a mortgage covering all the steamers sold by the Company to the Corporation, pursuant to this agreement, and in addition covering at least the following steamers: Calvin Austin, Belfast, Ransom B. Fuller, Camden, Gov. Cobb, Gov. Dingley, J. T. Morse, City of Bangor, City of Rockland, City of Augusta, Southport, Westport, Catherine, Juliette, Monhegan, Mineola, Bay State, Nahanada, Wiwurna, now or formerly owned by the Eastern Steamship Company; also the steamers Bunker Hill, Old Colony, Massachusetts, North Land, North Star; said last mentioned steamers being now or formerly owned by the Maine Steamship Company.

IN WITNESS WHEREOF, the parties hereto have caused these, presents to be executed by their respective Presidents and their corporate seals to be hereto affixed.

METROPOLITAN STEAMSHIP COMPANY,
By

*President.*

EASTERN STEAMSHIP CORPORATION,
By

*President.*

# Exhibit C. 100.

## Account, N. Y., N. H. & H. R. R. Co. in Farmers Loan and Trust Company.

L.—0. 1

129 A

Dr. New York, New Haven and Hartford R. R. Co. in account with THE FARMERS' LOAN AND TRUST COMPANY, Cr.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | 1,965.37 | | 1910 | | |
| Feb | 2 | To Cash | | 2,099.80 | 4,065.17 | Jan 31 | By Balance | 2,064,438.20 |
| | 3 | " " | | | 423,095.75 | Feb 5 | " Cash | 307,359.79 |
| | | | | 1,496.57 | | 11 | " " | 2,867,687.97 |
| | 4 | " " | | 200,000. | 201,496.57 | 14 | " " | 192,935.39 |
| | | | | 4,372.18 | | 19 | " Dep. Chg. to offset chg. Feb 17-10 | 20. |
| | 5 | " " | 100,972.22 | 920.37 | 106,264.77 | " | " Rem | 7,115.75 |
| | | | | 2,852.65 | | | | |
| | 7 | " " | | 1,396.09 | 4,248.74 | | | |
| | 9 | " " | | | 1,344.33 | | | |
| | 14 | " " | | | 2,044.58 | | | |
| | " | " " | | | 3,097.20 | | | |
| | 15 | " " | | | 6,144.42 | | | |
| | | 2 cks. 10.00 each retd. | | 20. | | | | |
| | 17 | " " | | 1,618.678.43 | 1,618,698.43 | | | |
| | 28 | " " | | | 700,000. | | | |
| | " | To Balance | | | 2,369,057.14 | | | |
| 1910 | | | | | 5,439,557.10 | 1910 | | 5,439,537.10 |
| Mar | 1 | To Cash | | | 28,366.43 | Feb 28 | By Balance | 2,369,057.14 |
| | 2 | " " | | | 1,233.32 | Mar 1 | " Cash | 569.909.59 |
| | 3 | " " | | | 167,107.46 | 4 | " " | 656,940.70 |
| | 8 | To Balance | | | 3,973,886.02 | 7 | " " | 274,685,80 |
| | | | | | | 8 | " Rem | 300,000. |
| 1910 | | | | | 4,170,593,23 | 1910 | | 4,170,593.23 |
| Mar | 11 | To Cash | | | 561,802.10 | Mch 8 | By Balance | 3,973,886.02 |
| | 15 | " " | | | 2,000,000. | 17 | " Rem | 288,479.41 |
| | 23 | " " | | | 101,652.78 | 24 | " " | 245,218.58 |
| | 30 | " " | | | 70,975. | | | |
| | 31 | " | | | 175,000. | | | |
| | " | To Balance | | | 1,598,154.13 | | | |
| | | | | | 4,507,584.01 | 1910 | | 4,507,584.01 |
| | | | | | | Mch 31 | By Balance | 1,598,154.13 |

*Exhibit C. 101.*

## Exhibit C. 101.

Clearing House sheets National Bank of Commerce and National City Bank, March 7, 1910.

March 7, 1910.

NATIONAL BANK OF COMMERCE.

243,609.54

1,524,563.58—1,768,173.12 192.29—1,991,901.51

400. 1,600.

818.11

506.90

1,717.49

849.49

4,903.76

5,922.04

3,714.28

1,128.67

673.

949.56

937.30

197,178.20

1,224.16

613.94

399.20

*Exhibits C. 101, C. 102.*

March 7, 1910.

NATIONAL CITY BANK.

297,007.69

1,854,151.42—2,151,159.11 2,583.15—2,371,141.22

557.10 1,106.44

900. 431.60

10,000. 517.46

65,737.10 457.51

1,626.28 603.15

512.10 555.35

650. 1,000.00

400.

400.

4,874.31

1,500.

1,298.70

2,120.

1,595.36

20,000.

100,000.

556.50

## Exhibit C. 102.

Signature card of New England Securities Company in National Bank of Commerce. (Printed on page 1513 of record.)

*Exhibit C. 102a.*

## Exhibit C. 102-A.

Bank of Commerce machine list March 7, 1910.

2d Teller

No. 23

Mar 5 1910

National Bank of Commerce

From No 2

Manhattan Company

1,500,000.00
15.94
24,543.64

1,524,559.58
4.00
192.29
243,609.54
219,698.80
399.20
613.94
1,224.16
1,600.00

1,991,901.51

Dnplicate slips of items rec'd from #2 March 7, 1910.

S

*Exhibit C. 103.*

## Exhibit C. 103.

Desk record Bank of Manhattan Company, March 7, 1910.

| | | | | | |
|---|---|---|---|---|---|
| | 25.00 | 75.00 | 35.00 | 100.00 | 2.00 |
| | 3.69 | 434.07 | 50.00 | 90.72 | 2.00 |
| | 716.51 | 18.13 | 15.81 | 7.50 | 45.83 |
| 10 | 5,000.00 | 127.42 | 8.24 | 34.25 | 10.07 |
| | 2.50 | 65.22 | 29.18 | 100.00 | 1.13 |
| | 8.90 | 467.61 | 5.36 | 37.50 | 11.41 |
| | 1.66 | 12.50 | 84.47 | 146.54 | 75.00 |
| | 3.92 | 739.36 | 14.70 | 15.00 | 8.50 |
| | 7.90 | 5.00 | 64.61 | 345.00 | 6.10 |
| | .93 | 18.75 | 1.60 | 130.34 | 4.86 |
| | 30.46 | 1,500,000.00 | 207.20 | 2.25 | 200.00 |
| | .69 | 15.94 | 30.13 | 42.90 | 22.56 |
| | 10.04 | 4.00 | 16.40 | 34.85 | 69.01 |
| | 6.00 | 1.00 | 18.60 | 37.40 | 3.20 |
| | 3.92 | 1.50 | 14.38 | 45.15 | 2.62 |
| | 5,159.72 | 10.00 | 9.53 | 8.45 | 161.80 |
| | 4.65 | 32.73 | 12.89 | 133.65 | 99.85 |
| 20 | 266.55 | 30.00 | 35.00 | 101.01 | 195.38 |
| | 2,072.78 | 22.06 | 88.71 | 75.00 | 122.25 |
| | 89.60 | 30.00 | 1.00 | 173.22 | 1.50 |
| | 66.26 | 65.00 | 3.00 | 101.55 | 8.82 |
| | 175.00 | 5,000.00 | 55.68 | 99.20 | 1.85 |
| | 50.00 | 930.00 | 21.60 | 5.00 | 23.82 |
| | 30.00 | 48,73.00 | 217.58 | 5.00 | 3.50 |
| | 10.00 | 97,450.00 | 5.00 | 25.00 | 3.10 |
| | 260.00 | 6,008.32 | 9.00 | 35.22 | 1,600.00 |
| | 1,190.00 | 70.71 | 3.50 | 8.26 | 1,224.16 |
| | 1,314.00 | 694.72 | 161.00 | 150.00 | 613.94 |
| | 1 | 3,243.58 | 1.00 | 18.00 | 399.20 |
| | 5,433.25 | 865.84 | 15.00 | 68.11 | 400.00 |
| 30 | 5.00 | 25.55 | 15.00 | | 818.11 |
| | 16.50 | 129.76 | 168.57 | 1.39 | 506.90 |
| | 15.97 | 1,487.50 | 30.33 | 30.48 | 1,717.49 |
| | 49.56 | 351.27 | 9.51 | 1.50 | 849.49 |
| | 9.00 | 72,945.00 | 10.50 | 17.24 | 4,903.76 |
| | 2.44 | 3.51 | 200.00 | 30.00 | 5,922.04 |
| | 5.00 | 100.00 | 29.24 | 237.35 | 3,714.28 |
| | 15.72 | 90.00 | 11.30 | 3.65 | 1,128.67 |
| | 264.32 | | 14.98 | 14.00 | 673.00 |
| | | | | | 949.56 |
| | | | | | 937.30 |
| | | | | | 197,178.20 |
| | Duplicate of check desk run-up | | | | |
| 40 | of items rec'd March 7, 1910 | | | | 1,991.901.52 |
| | from #2. | | | | |

*Exhibits C. 104—C. 108.*

## Exhibit C. 104.

Canfield entries National Bank of Commerce check desk book. (Printed on page 1409 of record.)

## Exhibit C. 105.

Canfield entries National Bank of Commerce general ledger, March 5, 1910. (Printed on page 1413 of record.)

## Exhibit C. 106.

Canfield entries National Bank of Commerce certified check sheet, March 5, 1910. (Printed on page 1420 of record.)

## Exhibit C. 107.

Canfield signature card in National Bank of Commerce. (Printed on page 1423 of record.)

## Exhibit C. 108.

Annual report New England Securities Company, March 4, 1910.

ANNUAL REPORT
THE
NEW ENGLAND SECURITIES COMPANY.

The corporation above named, organized and registered under the laws of the State of New Jersey, does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey entitled "An Act

*Exhibit C. 108.*

concerning corporations (Revision of 1896),'' and the various acts amendatory thereof and supplemental thereto:

FIRST.

The name of the corporation is

NEW ENGLAND SECURITIES COMPANY.

SECOND.

The location of the registered office is No. 15 Exchange Place, Jersey City, New Jersey, and The Corporation Trust Company is the agent upon whom process against the corporation may be served.

THIRD.

The character of the business is dealing in securities and as otherwise specified in the certificate of incorporation.

FOURTH.

The amount of the authorized capital stock is $1,500,000. The amount actually issued and outstanding is $1,500,000.

FIFTH.

The names of all the directors and officers and the time when the term of office of each expires are as follows:

| Names of Directors. | Expiration of Term. |
|---|---|
| John R. Turner | New Jersey Director, 1st Thurs. March 1911 |
| Stanley Bradley | do do. do. do. |
| Annis Mann | do. do. do. do. |

*Exhibit C. 108.*

| Officers. | Expiration of Term. |
|---|---|
| President, Annis Mann, | 1st Thurs. March 1911 |
| Treasurer and Secretary | |
| George A. MacIntosh | do. |

SIXTH

The next annual meeting of the stockholders for the election of directors is appointed to be held on the first Thurs. of March, 1911.

SEVENTH.

The name of the corporation has been at all times displayed at the entrance of its registered office in this State, and the corporation has kept at its registered office in this State a transfer book, in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders, as required by law.

The Post Office address of each of the foregoing directors and officers is No. 15 Exchange Place, Jersey City, New Jersey.

The Agent in New Jersey for the transfer of stock is The Corporation Trust Company, Jersey City, N. J.

In Witness Whereof, this report is signed in behalf of the corporation by the President and Secretary of the said corporation, this 4th day of March, 1910.

ANNIS MANN,

*President.*

GEO. A. MacINTOSH,

*Secretary.*

*Exhibit C. 109.*

ENDORSED:

"FILED MAR 5 1910

S. D. DICKINSON
SECRETARY OF STATE."

## Exhibit C. 109.

Annual report New England Securities Company, April 1, 1911.

ANNUAL REPORT
THE
NEW ENGLAND SECURITIES COMPANY

The corporation above named, organized and registered under the laws of the State of New Jersey, does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey entitled "An Act concerning corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto:

FIRST.

The name of the corporation is
NEW ENGLAND SECURITIES COMPANY.

SECOND.

The location of the registered office is No. 15 Exchange Place, Jersey City, New Jersey, and The Corporation Trust Company is the agent upon whom process against the corporation may be served.

THIRD.

The character of the business is dealing in securities and as otherwise specified in the certificate of incorporation.

*Exhibit C. 109.*

FOURTH.

The amount of the authorized capital stock $1,500,000. The amount actually issued and out standing is $1,500,000.

FIFTH.

The names of all the directors and officers ar the time when the term of office of each expires are as follows:

| Names of Directors. | Expiration of Term. |
|---|---|
| John R. Turner, New Jersey Director, | 1st Thurs. March 1911 Holdover No. 1911 Meeting. |
| Stanley Bradley | Do. Do |
| B. L. Leibson | " " |
| Officers. | Expiration of Term. |
| President, B. L. Leibson | As above set forth |
| Vice-President, None | |
| Treasurer, Geo. A. MacIntosh | " " " " |
| Secretary. | |

SIXTH.

The next annual meeting of the stockholders for the election of directors is appointed to be held on the First Thursday of March. 1912.

SEVENTH.

The name of the corporation has been at all times displayed at the entrance of its registered office in this State, and the corporation has kept at its registered office in this State a transfer book, in which the transfers of stock are made and a stock-book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all

times to the examination of the stockholders, as required by law.

The Post Office address of each of the foregoing directors and officers is No. 15 Exchange Place, Jersey City, New Jersey.

In Witness Whereof, this report is signed in behalf of the corporation by the President and Secretary of the said corporation, this 1st day of April, 1911.

B. L. LEIBSON,
*President.*

GEO. A. MacINTOSH,
*Secretary.*

ENDORSED:

"FILED APR. 4 1911

S. D. DICKINSON
SECRETARY OF STATE."

## Exhibit C. 110.

Canfield entry National Bank of Commerce, letter of advice sheet, March 5, 1910. (Printed on page 1382 of record.)

## Exhibit C. 111.

Canfield entries National Bank of Commerce, letter of advice, March 5, 1910. (Printed on page 1383 of record.)

*Exhibit C. 112.*

## Exhibit C. 112.

National Bank of Commerce, note tellers list, March 5, 1910.

NATIONAL BANK OF COMMERCE IN NEW YORK.

NOTE TELLER'S LIST.....19

| BANKS | No. | |
|---|---|---|
| B'k of N. Y. Nat'l B'k'g Assoc'n | 1 | 21,730.16 |
| Bank of the Manhattan Company | 2 | 99,581.45 |
| Merchants' National Bank | 3 | 61,183.10 |
| Mechanics' National Bank, | 4 | 34,206.87 |
| Bank of America | 6 | 27,761.69 |
| Phenix National Bank | 7 | 1,831.41 |
| National City Bank | 8 | 1,654.846.18 |
| Chemical National Bank | 12 | 4,273.08 |
| Merchants' Ex. National Bank | 13 | 6,446.23 |
| Gallatin National Bank | 14 | 8,394.91 |
| Nat. Butchers' & Drovers' B'k | 15 | 33.02 |
| Greenwich Bank | 17 | 9,973.59 |
| Amer. Exchange Nat'l Bank | 21 | 8,897.45 |
| Mercantile National Bank | 27 | 627.65 |
| Pacific Bank | 28 | 677.46 |
| Chatham National Bank | 30 | 204.93 |
| People's Bank | 31 | 2,472.38 |
| Hanover National Bank | 33 | 141,072.36 |
| Citizens' Central National Bank | 36 | 1,396.81 |
| Nassau Bank | 40 | 311.55 |
| Market & Fulton Nat'l Bank | 42 | 10,994.84 |
| Metropolitan Bank | 44 | 4,573.19 |
| Corn Exchange Bank | 45 | 13,688.74 |
| Importers' & Traders' Nat'l Bank | 53 | 2,859.90 |
| National Park Bank | 54 | 20,684.77 |
| East River National Bank, | 59 | 3.97 |
| Fourth National Bank | 61 | 40,470.07 |
| Second National Bank | 63 | 3,869.66 |
| First National Bank | 65 | 10,432.74 |
| Irving National Exchange B'k | 67 | 16,618.99 |
| Bowery Bank | 70 | 422.03 |
| N. Y. County National Bank | 17 | 1,595.18 |
| German-American Bank | 72 | 547.47 |
| Chase National Bank | 74 | 48,551.93 |
| Ass't Treasurer U. S. at N. Y. | 75 | 30,965.97 |
| Fifth Avenue Bank | 77 | 1,817.43 |
| German Exchange Bank | 76 | |
| Germania Bank | 78 | 160.20 |
| Lincoln National Bank | 80 | 3,332.84 |

*Exhibit C. 113.*

| BANKS | No. | |
|---|---|---|
| Garfield National Bank | 81 | 2,547.10 |
| Fifth National Bank | 83 | 150.11 |
| Bank of the Metropolis | 84 | 4,476.94 |
| West Side Bank | 85 | 15,553.13 |
| Seaboard National Bank | 91 | 5,829.95 |
| Liberty National Bank | 92 | 483.98 |
| N. Y. Produce Exchange Bank | 96 | 3,656.85 |
| State Bank | 97 | 5,306.12 |
| Fourteenth Street Bank | | |
| National Copper Bank | 99 | 6,164.20 |
| Coal and Iron Nat'l Bank | | |
| | | 2,341,680.58 |
| | | 1,301,717.00 |
| | | 3,643,397.58 |
| | | 1,664,767.80 |
| | | 5,308,165.38 |

(Stamped on back)
3rd Teller
NO.....
From 23.
Mar 5 1910

## Exhibit C. 113.

List of checks drawn by National Bank of Commerce on National City Bank, March 5, 1910.

1.77
1,400.00
300.00
171.00
198.00
100.00
256.00
436.80
1,084.01
93.00
180.00
54.00
480.00

*Exhibit C. 113.*

| | | |
|---|---|---|
| 69.00 | | |
| 2.07 | | |
| 1.83 | | |
| 1.17 | | |
| 7,210.00 | | |
| 3,000.00 | | |
| 143.92 | | 10 |
| 143.00 | | |
| 55.00 | | |
| 145.00 | | |
| 122.56 | | |
| 1,100.00 | | |
| 384.01 | | |
| 2,454.97 | | |
| 125.00 | | |
| 4.90 | | |
| 2,667.45 | | 20 |
| 500.00 | | |
| 200.00 | | |
| 45,100.00 | | |
| 2,864.05 | | |
| 1,737.16 | | |
| 51.59 | | |
| 2.84 | | |
| .52 | | |
| 488.00 | | |
| 2,000.00 | | 30 |
| 8,239.76 | | |
| 128.60 | | |
| 160.00 | | |
| 485.00 | 90.00 | |
| 1,212.75 | 77.00 | |
| 239.52 | 35.75 | |
| 3,090.00 | .78 | |
| 10,000.00 | | |
| 1,550,000.00 | | |
| 757.85 | 1,654,846.18 | 40 |
| 5,000.00 | | |

## Exhibit C. 114.

Clearing House slip, National Bank of Commerce on Bank of Manhattan Company, March 5, 1910.

333.33
2,396.05
150.00
200.00
99.75
3,377.49
10,000.00
10.00
862.58
3.40
1,600,000.00
38.20
75.00
160.00
270.00
3.00
258.33
1.75
32.00
1,618,270.88*

1,011.22
519,732.75

2,139,014.85*

## Exhibit C. 115.

New England Securities Company entries Bank of Manhattan Company, general debit book. (Printed on page 1522 of record.)

## Exhibit C. 116.

Metropolitan S. S. Co. of New Jersey entry Bank of Manhattan Company. (Printed on page 1528 of record.)

## Exhibit C. 117.

New England Securities Company entries Bank of Manhattan Company, March 5, 1910. (Printed on page 1489 of record.)

Admitted in evidence on page 1547.

## Exhibit C. 118.

Metropolitan S. S. Co. of New Jersey entries Bank of Manhattan Company, March 5, 1910. (Printed on page 1515 of record.)

Admitted in evidence on page 1547.

## Exhibit C. 119.

Billard Company loan account in Farmers Loan and Trust Company. (Printed on page 1344 of record.)

## Exhibit C. 120.

Billard Company loan account in Farmers Loan and Trust Company. (Printed on page 1345 of record.)

## Exhibit C. 121.

Billard Company credit slip March 5, 1910, Farmers Loan and Trust Company. (Printed on page 1347 of record.)

## Exhibit C. 122.

Billard Company deposit slip Farmers Loan and Trust Co., March 5, 1910. (Printed on page 1348 of record.)

## Exhibit C. 123.

Billard Company deposit slip Farmers Loan and Trust Company, March 4, 1910. (Printed on page 1349 of record.)

## Exhibit C. 124.

Check Farmers Loan and Trust Company to Canfield for $1,550,000, March 5, 1910. (Printed on page 1351 of record.)

## Exhibit C. 125.

Check stub Farmers Loan and Trust Company, Canfield check charged to Billard Company. (Printed on page 1352 of record.)

## Exhibit C. 126.

Certificate of Incorporation of New England Securities Company.

ARTICLE I.

The corporate name is NEW ENGLAND SECURITIES COMPANY.

ARTICLE II.

The objects for which the corporation is established are:

To acquire by subscription, purchase or otherwise, shares, bonds, notes and any other monetary securities, and to hold and sell the same,

and to guarantee the payment of dividends upon shares of the capital stock of any corporation or association, and the payment of principal and interest of any bonds, notes or other evidences of indebtedness, either in connection with the sale of the same or when held or sold by others; to give bonds of guaranty or indemnity, to reorganize or rehabilitate the business of any corporation, association, partnership, or individual, and to acquire, hold and dispose of any real or personal property that may be convenient for any of the business above described.

ARTICLE III.

The corporation shall be authoried to issue capital stock to the extent of One million five hundred thousand dollars ($1,500,000.00) divided into fifteen thousand shares of the par value of one hundred dollars each.

ARTICLE IV.

In furtherance and not in limitation of the powers conferred by statute, the board of directors are expressly authorized;

To hold their meetings, to have one or more offices and to keep the books of the company within or without the State of New Jersey, at such places as may be from time to time designated by them; but the company shall always keep at its principal and registered office in New Jersey a transfer book in which the transfers of stock can be made, entered and registered, and also a book containing the names and addresses of the stockholders and the number of shares held by them respectively, which shall be at all times during business hours open to the inspection of the stockholders in person.

*Exhibit C. 126.*

To determine from time to time whether, and, if allowed, under what conditions and regulation the accounts and books of the company (other than the stock and transfer books) or any of them, shall be open to the inspection of the stockholders' rights in this respect are and shall be restricted or limited accordingly.

To make, alter, amend and rescind the by-laws of the company, to fix the amount to be reserved as working capital, to fix the times for the declaration and payment of dividends upon the real and personal property of the company, provided always, that a majority of the whole board concur therein.

With the consent in writing, and pursuant also to the affirmative vote of the holders of a majority of the stock issued and outstanding, at a stockholders' meeting duly called for that purpose, to sell, assign, transfer or otherwise dispose of the property of the company as an entirety, provided always, that a majority of the whole board concur therein.

By a resolution passed by a majority vote of the whole board, under suitable provision of the by-laws, to designate two or more of their number to constitute an executive committee, which in the by-laws, have and exercise any or all the powers of the board of directors which may be lawfully delegated in the management of the business and affairs of the company, and shall have power to authorize the seal of the company to be affixed to all papers which may require it.

The company may use and apply its surplus earnings or accumulated profits to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time

to time, to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired shall be regarded as profits for the purpose of declaration or payment of dividends, unless otherwise determined by a majority of the board of directors.

The corporation reserves the right to amend, alter or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

ARTICLE V.

The principal and registered office of the company is (the same being also the post-office address of the subscribing incorporators) No. 15 Exchange Place, Jersey City, New Jersey, and The Corporation Trust Company is designated as the agent therein, in charge thereof, and upon whom process against this company may be served.

In accordance with an act of the Legislature of the State of New Jersey entitled "An act concerning Corporations" (Revision of 1896), and the acts amendatory thereof and supplemental thereto, for the purpose of forming a corporation of unlimited duration to do business both within and without the State of New Jersey, the undersigned do respectively subscribe for the capital stock with which the company will begin business, and do agree to take the number of shares set opposite our respective names and have accordingly signed this certificate and affixed our seals hereto.

| Name. | | No. of Shares taken by each subscriber. | Amount. |
|---|---|---|---|
| H. O. Coughlan | (SEAL) | 14998 | $1,499,800.00 |
| L. H. Gunther | (SEAL) | 1 | 100.00 |
| John R. Turner | (SEAL) | 1 | 100.00 |
| Amount with which the company will begin business | | | $1,500,000.00 |

Witness as to the foregoing signatures:
HARRY W. MEEN.

## Exhibit C. 127.

National City Bank accepted check list on Farmers Loan and Trust Company, March 7, 1910. (Printed on page 1578 of record.)

## Exhibit C. 128.

Transcript of account of Farmers Loan and Trust Company National City Bank. (Printed on page 1585 of record.)

## Exhibit C. 129.

Machine list of National City Bank, March 7, 1910. (Printed on page 1589 of record.)

*Exhibit C. 130.*

## Exhibit C. 130.

Billard Company account in Farmers Loan and Trust Co.

Dr. THE BILLARD COMPANY in account with THE FARMERS LOAN AND TRUST COMPANY, Cr.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1910 | | | 1550000 | | 1910 | | |
| Mch | 5 | To Cash c | 200000 | 1750000 | Mch 4 | By Cash | 60000 |
| | " | " " c | | 1500000 | 5 | " Proceeds of loan | 1700000 |
| July | 12 | " " | | 50000 | " | " Cash | 1550000 |
| Sept | 12 | " " | | 7000 | June 1 | " Interest | 362.50 |
| Dec | 31 | " Balance | | 3595.96 | Dec 1 | " " | 233.46 |
| | | | | 3310595.96 | | | 3310595.96 |
| 1911 | | | 17000 | | 1910 | | |
| Mch | 4 | To Cash | 1700000 | 1717000 | Dec 31 | By Balance | 3595.96 |
| | | | | | 1911 | | |
| | 14 | " " | | 283016 | Mch 1 | " Cash | 2000000 |
| Dec | 30 | " Balance | | 4290.93 | June 1 | " Interest | 658.01 |
| | | | | | Dec 1 | " " | 52.96 |
| | | | | 2004306.93 | | | 2004306.93 |
| 1912 | | | | | 1911 | | |
| May | 1 | To Cash | | 3290.93 | Dec 30 | By Balance | 4290.93 |
| | | c | 100433.76 | | 1912 | | |
| Nov | 15 | " " c | 1004888.89 | | June 1 | " Interest | 46.76 |
| | " | " " c | 416343.61 | 1521666.26 | Nov 15 | " Cash | 1600000 |
| | " | " Balance | | 79380.50 | | | |
| | | | | 1604337.69 | | | 1604337.69 |
| 1912 | | | | | 1912 | | |
| Nov | 30 | To Cash | | 10000. | Nov 15 | By Balance | 79380.50 |
| Dec | 31 | " " | | 22712.50 | Dec 1 | " Interest | 99.45 |
| 1913 | | | | | 1913 | | |
| Mar | 8 | " " | | 20000 | June 1 | " " | 396.32 |
| | 17 | " " | | 18000 | | | |
| Apr | 11 | " " | | 8000 | | | |
| June | 9 | " Balance | | 1163.77 | | | |
| | | | | 79876.27 | | | 79876.27 |
| 1914 | | | | | 1913 | | |
| July | 9 | To Cash | | 1163.77 | June 9 | By Balance | 1163.77 |
| | | | | | Dec 1 | " Interest | 14.53 |
| | | | | | 1914 | | |
| | | | | | June 1 | " " | 14.72 |

*Exhibits C. 131, C. 132.*

## Exhibit C. 131.

Billard Company loan account in Farmers Loan and Trust Company. (Printed on page 1358 of record.)

## Exhibit C. 132.

Letter, Billard Company to Farmers Loan and Trust Co., March 1, 1911.

(Copy.)

THE BILLARD COMPANY.

Post Office Drawer #20,

New Haven, Connecticut, March 1st, 1911.

Date rec'd 3/1/11
Date ans'd
No. 59427

The Farmers Loan & Trust Company,
New York,
N. Y.

Enclosed you will please find our check for $1,700,000. under date of *March 4th, 1911,* which I hand you to retire our demand note for like amount.

I also hand you enclosed herewith our check to your order for $17,000. in payment of interest on our demand note above referred to.

You will please cancel our note on the 4th of March, returning it to me at New Haven, and kindly hold the collateral on same for a few days until I can make arrangements to receive it from you.

Yours very truly,
THE BILLARD COMPANY,
SAMUEL HEMINGWAY,
*Treasurer.*

*Exhibit C. 133.*

## Exhibit C. 133.

Letter, Farmers Loan and Trust Company to Billard Co., March 1, 1911.

(Copy.)

March 1st, 1911.

The Billard Company,
Samuel Hemingway, Esq., Treasurer,
P. O. Drawer #20, New Haven, Conn.

Dear Sir:—

We beg to acknowledge receipt of your letter of March 1st enclosing check for $1,700,000., dated March 4th, 1911, also your check for $17,000., bearing the same date, in payment of principal and interest of your note due March 5th, 1911. As requested by you, we will cancel the above note and return it to you on the 4th of March and hold the collateral until called for by you.

Yours very truly,

The Farmers' Loan and Trust Company,
By A. V. HEELY,
*Vice-President.*

*Exhibits C. 134, 135.*

## Exhibit C. 134.

Receipt Billard Company to Farmers Loan and Trust Co., dated March 14, 1911.

(Copy.)

THE FARMERS' LOAN AND TRUST COMPANY,

16, 18, 20 & 22 William Street,

New York, Mch 14, 1911

RECEIVED from The Farmers' Loan and Trust Company $3,000,000 New England Invest & Securities Co. 3-4-5 Gold Notes due 1924

The Billard Co.
John L. Billard Pt
Samuel Hemingway Tr

## Exhibit C. 135.

Account New England Navigation Company in Farmers Loan and Trust Company.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1911 | | | 2500 | | 1911 | | |
| Mch 1 | To Cash | | 4000 | | Feb 28 | By Balance | 2038944.78 |
| | | | 2000000 | 2006500 | | | |
| 6 | " | " | | 180 | Mch 14 | " Rem | 283016 |
| 18 | " | " | | 19586.33 | 17 | " " | 40185.42 |
| | | | 120000 | | | | |
| 30 | " | " | 190000 | 310000 | 31 | " " | 97872.54 |
| 31 | " | Balance | | 123752.41 | | | |
| | | | | 2460018.74 | | | 2460018.74 |
| | | | | | 1911 | | |
| | | | | | Mch 31 | By Balance | 123752.41 |

*Exhibits C. 136, C. 137-A.*

## Exhibit C. 136.

Deposit slip Billard Company in Farmers Loan and Trust Company, March 1, 1911. (Printed on page 1362 of record.)

## Exhibit C. 137.

Farmers Loan and Trust Company Record Billard & Company checks of $200,000 and $1,-500,000. (Printed on page 1367 of record.)

## Exhibit C. 137-A.

Certificate of Organization of Eastern Securities Company.

STATE OF MAINE.

CERTIFICATE OF ORGANIZATION OF A CORPORATION UNDER THE GENERAL LAW.

The undersigned, officers of a corporation organized at Augusta, Maine at a meeting of the signers of the articles of agreement therefor, duly called and held at the office of Norman L. Bassett in the city of Augusta on Thursday the fourth day of January A. D. 1912 hereby certify as follows:

The name of said corporation is EASTERN SECURITIES COMPANY.

The purposes of said corporation are

To buy, sell, hold, mortgage, develop, improve and deal in and with real estate and interests of every kind therein.

To subscribe for, purchase, invest in, hold, own, sell, assign, transfer, mortgage, pledge or otherwise acquire or dispose of capital stock,

bonds, mortgages, debentures, notes and other securities, obligations, contracts and evidences of indebtedness of corporations or associations of the State of Maine or of any other state or of any territory or country; to exercise in respect to such shares of stock, bonds, mortgages, debentures, contracts and evidences of indebtedness of corporations and associations any and all the rights, powers and privileges of individual ownership, including the right to vote, etc.

Nothing in these purposes shall be construed to give the corporation any rights, powers or privileges not permitted by the laws of the State of Maine to corporations organized under Section 6 of Chapter 47 of the Revised Statutes.

The amount of capital stock is fifty thousand dollars ($50,000)

The amount of common stock is fifty thousand dollars ($50,000)

The amount of preferred stock is nothing.

The amount of capital stock already paid in is nothing.

The par value of the shares is one hundred dollars ($100).

The names and residences of the owners of said shares are as follows:

| Names. | Residences. | No. of Shares. Common | Preferred. |
|---|---|---|---|
| Norman L. Bassett | Augusta, Maine | One (1) | |
| George K. Bassett | Augusta, Maine | One (1) | |
| M. Brainerd | Augusta, Maine | One (1) | |
| Number of shares unsubscribed | | 497 | |
| Total number of shares | | 500 | |

Said corporation is located at Augusta in the County of Kennebec.

The number of directors is three and their names are Norman L. Bassett, George K. Bassett and M. Brainerd.

The name of the clerk is Norman L. Bassett and his residence is Augusta, Maine. The undersigned George K. Bassett is president; the undersigned M. Brainerd is treasurer; and the undersigned Norman L. Bassett, George K. Bassett and M. Brainerd are a majority of the directors of said corporation.

Witness our hands this fourth day of January, A. D. 1912.

GEORGE K. BASSETT President.
M. BRAINERD Treasurer.

NORMAN L. BASSETT
GEORGE K. BASSETT } Directors.
M. BRAINERD

## Exhibit C. 137-B.

Check of John F. Hill to Eastern Securities Company for 50,000. (Printed on page 1159 of record.)

## Exhibit C. 138.

Eastern Securities Company, original subscription for stock. (Printed on page 1161 of record.)

## Exhibit C. 139.

Eastern Securities Company, second subscription for stock. (Printed on page 1162 of record.)

## Exhibit C. 140.

Eastern Securities Company, organization minutes meeting January 13, 1912. (Printed on page 1163 of record.)

## Exhibit C. 141.

Eastern Securities Company, organization minutes. (Printed on page 1164 of record.)

## Exhibit C. 142.

Letter, Robbins to Hill, January 5, 1912. (Printed on page 1168 of record.)

## Exhibit C. 143.

Letter, Hill to Robbins, January 5, 1912. (Printed on page 1170 of record.)

## Exhibit C. 144.

Letter, Hill to Robbins, January 6, 1912. (Printed on page 1173 of record.)

## Exhibit C. 145.

Letter, Robbins to Hill, January 6, 1912. (Printed on page 1175 of record.)

## Exhibit C. 146.

Letter, Robbins to Hill, January 12, 1912. (Printed on page 1177 of record.)

## Exhibit C. 147.

Letter, Hill to Robbins, January 12, 1912. (Printed on page 1179 of record.)

**Exhibit C. 148.**

Letter, Hill to Robbins, January 12, 1912. (Printed on page 1181 of record.)

**Exhibit C. 149.**

Letter, Hill to Robbins, January 13, 1912. (Printed on page 1183 of record.)

**Exhibit C. 150.**

Letter, Hill to Robbins, January 15, 1912. (Printed on page 1185 of record.)

**Exhibit C. 151.**

Check, Hill to Robbins, for $44,387.50, January 15, 1912. (Printed on page 1186 of record.)

**Exhibit C. 152.**

Letter, Hill to Robbins, January 16, 1912. (Printed on page 1188 of record.)

**Exhibit C. 152-A.**

Letter, Hill to Robbins, January 20, 1912. (Printed on page 1192 of record.)

**Exhibit C. 153.**

Envelope containing C. 154 and C. 155. (Printed on page 1196 of record.)

**Exhibit C. 154.**

New England Securities Company, Note to Billard Company for $1,500,000. (Printed on page 1196 of record.)

**Exhibit C. 155.**

Receipt for 20,000 shares capital stock of Metropolitan Steamship Company of Maine. (Printed on page 1197 of record.)

**Exhibit C. 156.**

Eastern Steamship Corporation, certificate for 8,500 shares issued to Eastern Securities Company June 10, 1912. (Printed on page 1202 of record.)

**Exhibit C. 157.**

John F. Hill, deposit book in State Trust Company of Augusta, Maine. (Printed on page 1208 of record.)

**Exhibit C. 158.**

Eastern Securities Company, check book in State Trust Company of Augusta, Maine. (Printed on page 1209 of record.)

**Exhibit C. 159.**

Check to John F. Hill for $123.35, January 12, 1912. (Printed on page 1211 of record.)

**Exhibit C. 160.**

Check to John F. Hill for $5,489.15, January 12, 1912. (Printed on page 1212 of record.)

**Exhibit C. 161.**

John F. Hill's ledger entry Eastern Securities Company for $50,000. (Printed on page 1219 of record.)

## Exhibit C. 162.

John F. Hill, ledger entry, E. D. Robbins, for $44,387.50. (Printed on page 1220 of record.)

## Exhibit C. 163.

John F. Hill, cash book entry, E. D. Robbins, $44,387.50. (Printed on page 1221 of record.)

## Exhibit C. 164.

John F. Hill, cash book entry, E. D. Robbins for 44,387.50. (Printed on page 1222 of record.)

## Exhibit C. 165.

John F. Hill, cash book entry, Eastern Securities Company for $50,000. (Printed on page 1223 of record.)

## Exhibit C. 166.

John F. Hill, cash book entry, Eastern Securities Company for $50,000. (Printed on page 1223 of record.)

## Exhibit C. 167.

Subpoena issued to Arthur E. Clark. (Printed on page 1298 of record.)

## Exhibit C. 169.

Minutes of Executive Committee, N. Y., N. H. & H. R. R. Co., October 8, 1909. (Printed on page 1310 of record.

## Exhibit C. 170.

Minutes of Directors' meeting, N. Y., N. H. & H. R. R. Co., October 8, 1909. (Printed on page 1312 of record.)

*Exhibits C. 172—C. 185.*

## Exhibit C. 172.

Subpoena issued to Lillian W. Gleue. (Printed on page 1330 of record.)

## Exhibits C. 173 to C. 180.

Eight of the ten-year promissory notes for $1,000 each of Metropolitan Steamship Company printed in petition of Elmer E. Newbert and Reuel J. Noyes. (Printed on page 94b of record.)

## Exhibit C. 181.

Letter, American Trust Company to Jennie R. Morse, dated March 10, 1910. (Printed on page 137 of record.)

## Exhibit C. 182.

Stock certificate No. 139 of Metropolitan S. S. Co. dated March 15, 1911, for three shares issued in name of Jennie R. Morse. (Not printed.)

## Exhibit C. 183.

Stock Certificate No. 142 of Metropolitan S. S. Co., dated December 3, 1912, for 134 shares issued in name of Jennie R. Morse. (Not printed.)

## Exhibit C. 185.

Stock certificate books, Metropolitan S. S. Co., containing stubs of certificates numbered as follows: Temporary No. 4; official numbers 4, 10, 24, 61, 139, 38, 39, 95, 100, 101, 103, 104, 108, 94, 110, 142, 122, 45, 146, 93, 147, 21, 148, 79. (Not printed.)

## Exhibits C. 186 and 187.

Two ten-year promissory notes for $2,000 each of the Metropolitan Steamship Company, printed in petition of Elmer E. Newbert and Reuel J. Noyes. (Printed on page 94a of record.)

## Exhibit C. 188.

Mortgage, Metropolitan S. S. Co., to Alfred C. Greening, dated October 10, 1910.

THIS INDENTURE dated the tenth day of October, One thousand nine hundred and ten, by and between METROPOLITAN STEAMSHIP COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, (hereinafter termed the "Company") party of the first part, and ALFRED C. GREENING, of the town of Montclair, in the State of New Jersey, as Trustee, (hereinafter termed the "Trustee"), party of the second part:

WHEREAS Metropolitan Steamship Company is about to issue and deliver its second mortgage six per cent. five-year bonds to the amount of Seven Hundred and Fifty Thousand Dollars, to be of substantially the following tenor and form:

UNITED STATES OF AMERICA
STATE OF NEW JERSEY

No. $1,000.

METROPOLITAN STEAMSHIP COMPANY

SECOND MORTGAGE SIX PER CENT. FIVE YEAR BOND.

Metropolitan Steamship Company (hereinafter termed the "Company") a corporation duly or-

ganized under the laws of the State of New Jersey, for value received, hereby promises to pay to the bearer hereof, at the Bank of The Manhattan Company in the City and State of New York, on the tenth day of October, 1915, One Thousand Dollars ($1,000) in gold coin of the United States of America of or equal to the present standard of weight and fineness, and to pay interest thereon in like gold coin, from the tenth day of October, 1910, at the rate of six per cent. (6%) per annum, payable semi-annually at said office on the tenth day of April and the tenth day of October in each year; such instalments of interest to be paid in accordance with, and upon the presentation and surrender of, the annexed coupons as they severally mature. Both principal and interest shall be payable without deduction for any tax which the Company may be required to pay thereon or to retain therefrom under any present or future law or ordinance of the United States of America or of any State, county, municipality or other lawful taxing authority therein.

This bond is one of an issue of bonds of the Company known as its Second Mortgage Six Per Cent. Five Year Bonds, issued and to be issued under, and all equally secured by, a mortgage or deed of trust bearing date the tenth day of October, 1910, between the Company and Alfred C. Greening as Trustee. For the nature and extent of the security, the rights of the holders of the bonds, and the terms and conditions upon which the bonds are issued and secured, reference is made to said mortgage or deed of trust. The bonds of said issue are limited to the aggregate principal amount of Seven Hundred and Fifty Thousand Dollars ($750,-

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000) are in denominations of One Thousand Dollars ($1,000) each, and are numbered from one to seven hundred and fifty (1-750) inclusive.

In case any event of default shall occur, as specified in said mortgage or deed of trust, the principal hereof may become due in the manner and with the effect described in said mortgage or deed of trust, and subject to the provisions thereof. It is a condition of this bond that no recourse shall be had for the payment of the principal or interest of this bond, or for any claim based thereon, or in any manner in respect thereof, or of said mortgage or deed of trust, against any stockholder, officer or director, present or future, of the Company, whether by virtue of any suit, or the enforcement of any penalty or otherwise.

This bond shall not be valid until authenticated by the certificate of the Trustee for the time being under the said mortgage or deed of trust.

In Witness Whereof Metropolitan Steamship Company has caused this bond to be signed in its corporate name by its president or one of its vice-presidents, and its corporate seal to be hereunto affixed, duly attested by its secretary or one of its assistant secretaries, and the coupons for said interest with the engraved, lithographed or printed signature of its treasurer to be attached hereto as of the tenth day of October, 1910.

METROPOLITAN STEAMSHIP COMPANY,

By

*President.*

Attest:

*Secretary.*

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(Form of Coupon.)

No. $30

On the tenth day of , 19 , on the surrender of this coupon, Metropolitan Steamship Company will pay to bearer at the office of the Bank of The Manhattan Company in the City and State of New York, Thirty Dollars ($30), in gold coin of the United States of America, being six months interest then due on its Second Mortgage Six Per Cent Five Year Bond No.

.....

*Treasurer.*

(Form of Trustee's Certificate)

This is to certify that this bond is one of the bonds referred to in the within-mentioned mortgage or deed of trust as secured thereby.

.....

*Trustee.*

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to secure the payment of all the bonds at any time issued and outstanding under this indenture, as well the interest and principal thereof, and to secure the performance and observance of all the covenants and conditions therein and herein contained, and for and in consideration of the acceptance or purchase of the bonds by the holders thereof, and of the sum of One Hundred Dollars, lawful money of the United States of America, to the Company duly paid by the Trustee at or before the ensealing of this indenture, the receipt of which is hereby acknowledged, Metropolitan

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Steamship Company by these presents does give, grant, bargain, sell, alien, remise, release, convey, assign, confirm, transfer and set over unto the Trustee, his successor and successors, and his and their assigns, the steamships "Yale" and "Harvard" now owned by the Company, and the hull of each thereof, together with all the boilers, engines, machines, masts, bowsprits, sails, rigging, boats, anchors, cables, chains, tackle, apparel, furniture and equipment, and all other appurtenances to said steamships or either of them respectively belonging, a copy of the certificate of enrollment of each of the said steamships being annexed to this indenture and made a part thereof as Schedules "A" and "B" respectively:

To Have and To Hold the premises unto the Trustee, his successors and assigns forever, subject, however, to the lien of the First Mortgage of the Company to American Trust Company dated November 15, 1909, and to all liens described in said mortgage.

In Trust, Nevertheless, for the equal pro rata benefit, security and protection of the persons, firms and corporations who from time to time shall hold the bonds authenticated and issued hereunder and secured hereby, without any discrimination, preference or priority of any one bond over any other, and in trust for enforcing payment of the principal and interest thereon according to the tenor of said bond and of this indenture, and for enforcing the terms, provisions and stipulations herein set forth, and upon the trusts, uses and purposes, and subject to the covenants, agreements and conditions hereinafter set forth and declared.

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ARTICLE I.

Section 1. The bonds shall be executed by the Company and delivered by it to the Trustee for authentication and thereupon the Trustee forthwith shall authenticate all of said bonds amounting to the aggregate principal sum of Seven Hundred and Fifty Thousand Dollars, numbered from one to seven hundred and fifty (1 to 750) inclusive, and shall deliver the same as the Treasurer of the Company may by written order direct. The aggregate amount of all the bonds which may be issued and outstanding at any time under this indenture shall not exceed the principal amount of Seven Hundred and Fifty Thousand Dollars. The coupons to be attached to said bonds shall be authenticated by the printed, lithographed or engraved signature of the present Treasurer or of any future Treasurer of the Company, and the Company may adopt and use for that purpose the signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time such bonds shall be actually authenticated and delivered. Only such bonds as shall bear thereon a certificate duly executed by the Trustee, substantially in the form hereinbefore recited, shall be entitled to any lien or benefit hereunder, and such authentication by the Trustee upon any such bond shall be conclusive evidence that the bond so authenticated is secured hereby, and that the holder is entitled to the benefit of the trusts hereby created.

Section 2. Until the permanent bonds can be prepared, the Company may execute, and upon its request the Trustee shall authenticate and deliver, in lieu of such permanent bonds, and

subject to the same provisions, limitations and conditions, temporary typewritten, printed or lithographed bonds, either registered or negotiable by delivery, and substantially of the tenor of the permanent bonds, except that no coupons shall be attached to such temporary bonds, and that such temporary bonds may be for One Thousand Dollars or any multiple thereof as the Company shall determine. Each such temporary bond shall bear upon its face the words "Temporary Second Mortgage Six per cent. Five-Year Bond. Exchangeable for a like principal amount of permanent bonds," and shall be authenticated by the Trustee in like manner as hereinabove provided for the permanent bonds; and the authentication of the Trustee shall be conclusive evidence that the bond so authenticated has been secured hereby, and that the holder is entitled to the benefit of this indenture.

Such temporary bonds shall be exchangeable for permanent bonds when the same are ready for delivery; and upon surrender of any such temporary bonds for exchange, such temporary bonds forthwith shall be canceled and destroyed by the Trustee, and the Company at its own expense shall issue, and the Trustee shall authenticate and deliver in exchange therefor, permanent bonds for the same aggregate principal amount as the temporary bonds surrendered. Until so exchanged, each of said temporary bonds in all respects shall be entitled to the lien and security of this indenture as a bond issued and authenticated hereunder, and interest, when and as payable, shall be paid and endorsed thereon.

Such temporary bonds may from time to time be surrendered to the Trustee for cancellation,

and other temporary bonds be delivered by the Company and authenticated by the Trustee in the place thereof to the aggregate principal amount of such temporary bonds so surrendered and canceled.

Section 3. In case any bond, with the coupons belonging thereto, shall become mutilated or shall be lost or destroyed, then, upon the production of such mutilated bond, or upon the receipt of evidence satisfactory to the Company and the Trustee, of the loss or destruction of such bond and its coupons, and upon receipt also of indemnity satisfactory to each of them, the Company, in its discretion, may execute, and thereupon the Trustee shall authenticate and deliver, a new bond and coupons bearing the same serial number, in exchange for, and upon cancellation of, the mutilated bond and its coupons, or in lieu of the bond and its coupons so lost or destroyed.

Section 4. Nothing in this indenture or in the bonds expressed or implied is intended or shall be construed to give any person or corporation other than the parties hereto and the holders of the bonds any legal or equitable right, remedy or claim under or in respect of this indenture, or under any covenant, condition or provision herein contained; all the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and of the holders of the bonds.

## ARTICLE II.

Section 1. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds, or of

some part of such interest or principal, or until some one or more of the other events if default hereinafter described shall happen, the Company shall be suffered and permitted to retain actual possession of all the vessels, premises and properties hereby conveyed, and by itself or its agents to manage, operate and use the same, and every part thereof.

Section 2. If, when the bonds shall have become due and payable, the Company shall well and truly pay, or cause to be paid, the whole amount of the principal moneys and the interest due upon all of the bonds and the coupons for interest thereon, then outstanding, or shall provide for such payment by depositing with the Trustee for the payment of such bonds and coupons the entire amount due thereon for principal and interest, and also shall pay or cause to be paid all other sums at the time payable hereunder by the company, and well and truly shall keep and perform all things herein required to be kept and performed by the Company, according to the true intent and meaning of this indenture, then, and in that case, all property, rights and interests hereby conveyed shall revert to the Company, and the estate, right, title and interest of the Trustee thereupon shall cease, determine and become void, and the Trustee in such case, on demand of the Company and at its cost and expense, shall execute and deliver such instruments in writing as may be reasonably required by the Company to revest in it the full and legal title of the estate, properties and premises hereby conveyed; otherwise, the same shall continue and remain in full force and effect.

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## ARTICLE III.

The Company covenants as hereinafter in this Article set forth:

Section 1. The Company duly and punctually will pay the principal and interest of every of the bonds, at the dates and places, and in the manner mentioned in such bonds, and in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction for any tax or taxes which the Company may be required to pay thereon, or to deduct therefrom, under any present or future law or ordinance of the United States of America, or of any State, county, municipality, or other lawful taxing authority therein, and when and as paid all such coupons forthwith shall be canceled.

Section 2. The Company voluntarily will not create or suffer to be created any lien or charge having priority to or performance over the lien of this indenture upon the trust estate or any part thereof, or upon the income thereof, and within three months after the same shall accrue it will pay or cause to be discharged, or make adequate provision for the satisfaction or discharge of, all lawful claims and demands of mechanics, laborers and others, which, if unpaid, might by law be given precedence over this indenture as a lien or charge upon the trust estate or any part thereof, or the income thereof, provided that the Company shall not be required to pay any such debt, lien or charge so long as it shall in good faith, and by appropriate proceedings, contest the validity thereof.

Section 3. The Company from time to time will pay and discharge, or cause to be paid and discharged, all taxes, assessments, and governmental charges lawfully imposed upon the steam-

ers, vessels and other premises, concessions, franchises and property hereby pledged or mortgaged, or upon any part thereof or upon the income and profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such properties, and will also pay and discharge all taxes, assessments and governmental charges, the lien of which would be prior to the lien hereof, lawfully imposed upon the interest of the Trustee in the trust estate or income, provided, however, that nothing contained in this Section shall require the Company to pay any such tax, assessment or charge so long as the Company in good faith, and by appropriate proceedings, shall contest the validity thereof.

Section 4. The Company will maintain, preserve and keep all and singular the steamers and other property and all incident and appurtenant property at any time constituting part of the trust estate, in thorough working order and repair, and will make all needful and proper renewals, replacements and repairs, so that its traffic and business shall at all times be conducted with safety and expedition, and will at all times keep the said described property and all parts thereof supplied with all necessary equipment and will conduct its business and operate its steamship lines in an efficient manner.

Section 5. The Company will pay to the Trustee all expenses incurred by the Trustee in the execution of the trusts hereof, and all sums of money, if any, that shall have been paid by the Trustee or by any person interested in the trusts herein, on account of any such taxes, charges, assessments or liens or insurance moneys, or

otherwise, in case of any default in payment thereof on the part of the Company, as aforesaid, with interest at the rate of six per cent. per annum from the time or times of such payments respectively.

Section 6. In the event of any sale of the trust estate, or of any part thereof, under any power or authority herein contained, the Company, if and when required by the Trustee or the purchaser, will execute a formal conveyance or assurance of the property so sold, to the Trustee, or as the Trustee may direct.

## ARTICLE IV.

Section 1. In case any one or more of the following events, herein termed events of default, shall happen viz:

(a) default shall be made in the payment of any instalment of interest on any of the bonds as the same shall become payable and such default shall continue for the space of two months; or

(b) default shall be made in the due and punctual payment of the principal of any bonds when the same shall become due and whether at maturity or by declaration or otherwise; or

(c) default shall be made in the due observance or performance of any covenant or condition herein required to be kept or performed by the Company, and any such default shall have continued for a period of two months after written notice of such default from the Trustee to the Company; or

(d) a receiver shall be appointed of the properties or any of them on which, at the time, this indenture is a direct charge;

then, and in each and every such case, the Trustee personally, either in his own right as Trustee or as attorney in fact for the Company, or by his agents or attorneys, may enter into and upon all or any part of the trust estate of which the Trustee shall not be in possession, and may exclude the Company, its agents and servants, wholly therefrom, and, having and holding the same, may use, operate, manage and control the steamers, vessels and property hereby conveyed, and each and every part thereof, regulate the tolls for the use thereof and the transportation of passengers thereon according to law, and conduct the business thereof, either personally or by his superintendents, managers, receivers, agents and servants, or attorneys, to the best advantage of the holders of the bonds, and upon every such entry the Trustee, at the expense of the trust estate, from time to time, either by purchase, repairs or construction, may maintain and restore, and insure or keep insured, the steamers, equipment and other property, provided for use in connection with the trust estate and whereof he shall become possessed, as aforesaid, in the same manner and to the same extent as is usual with steamship companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to him may seem judicious, and, in such case, the Trustee shall have the right to manage the trust estate, and to carry on the business and exercise all the rights and powers of the Company, either in the name of the Company or otherwise, as the Trustee shall deem best; and the Trustee shall be

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entitled to collect and receive all tolls, earnings, income, rents, issues and profits of the trust estate and every part thereof; and, after deducting the expenses of operating said steamers and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the trust estate, or any part thereof, as well as just and reasonable compensation for his own services, and for all attorneys, counsel, agents, clerks, servants and other employees by him properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

In case the principal of the bonds shall not have become due, to the payment of the interest in default, in the order of the maturity of the instalments of such interest, with interest thereon at the rate of six per cent per annum; such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

In case the principal of the bonds shall have become due, by declaration or otherwise, first, to the payment of the accrued interest (with interest on the overdue instalments thereof at the rate of six per cent. per annum) in the order of the maturity of the instalments, and then to the payment of the principal of all the bonds; in every instance such payments to be made ratably to the persons entitled to such payment, without any discrimination or preference.

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In case all defaults of the Company shall be made good, including the payment of all interest in arrears, and all costs, charges and expenses incurred by the Trustee as above mentioned shall have been paid and satisfied, then the Trustee shall restore to the Company possession of the trust estate so entered upon and not then sold, and such property shall thereupon be subject to all the trusts and provisions of these presents in the same manner and to the same extent as if such entry had not been made.

Section 2. If one or more of the events of default specified in Section 1 of this Article shall happen the Trustee may, and, upon the written request of the holders of twenty five per cent. in amount of the bonds then outstanding, shall, by notice in writing delivered to the Company, declare the principal of all bonds then outstanding to be due and payable immediately. Upon any such declaration by the Trustee, the principal of all bonds then outstanding shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable, and before any sale of the trust estate shall have been made, all arrears of interest upon all the bonds, with interest at the rate of six per cent. per annum on overdue instalments of interest and all other amounts in respect to which the Company shall then be in default under this indenture other than the principal of the bonds, shall, together with the expenses of the Trustee, either be paid by the Company, or be collected out of the trust estate, then and in

every such case the holders of three-fourths in amount of the bonds outstanding, by written notice to the Company and to the Trustee, may waive such default and its consequences, but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case, the Company and the Trustee shall be restored to their former position and rights hereunder in respect of the trust estate and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

Section 3. If one or more of the events of default shall happen, the Trustee, with or without entry, personally or by attorney, in his discretion

(a) may sell to the highest and best bidder, all and singular, the trust estate, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of Section 5 of this Article, in which case such sale may be made in parcels as in said Section provided; such sale or sales shall be made at public auction at such place in the City of New York in the State of New York, or at such other place, and at such time and upon such terms, as the Trustee may fix and briefly

specify in the notice of sale to be given as herein provided; or

(b) may proceed to protect and enforce his rights and the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of his rights or duties hereunder.

Section 4. Upon the written request of the holders of twenty-five per cent. in amount of the bonds, in case of the happening of one or more of the events of default, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all needful steps for the protection and enforcement of his rights and the rights of the holders of the bonds, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee, being advised by counsel, shall deem most expedient in the interest of the holders of the bonds.

Section 5. In the event of any sale, whether made under the power of sale granted and conferred by this indenture, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the trust estate shall be sold in one parcel and as an entirety, including both the steamships, unless the holders of a majority in amount of the

bonds then outstanding shall, in writing, request the Trustee to cause the trust estate to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request, unless otherwise required by law; and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons.

The Company, for itself and all persons and corporations hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this indenture, hereby expressly waives and releases all right to have the properties and estate comprised in the security intended to be created by this indenture marshaled, upon any foreclosure or other enforcement hereof; and the Trustee or any court in which the foreclosure of this indenture, or administration of the trusts created by this indenture, is sought, shall have the right, as aforesaid, to sell the entire trust estate, as a whole, in a single parcel.

Section 6. Notice of any such sale pursuant to any provision of this indenture shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published twice in each week for eight successive weeks prior to such sale in two newspapers of general circulation in the city of New York.

Section 7. The Trustee from time to time may adjourn any sale to be made by him under the provisions of this indenture, by announcement at the time and place appointed for such adjourned sale or sales; and without further notice or publication, he may make such sale at the time and place to which the same shall be so adjourned.

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Section 8. Upon the completion of any sale or sales under this indenture, the Trustee shall execute and deliver to the accepted purchaser or purchasers a deed or deeds of conveyance of the property sold. The Trustee and his successors hereby are appointed the true and lawful attorney and attorneys, irrevocable, of the Company, in its name and stead to make all necessary or proper deeds, conveyances, transfers and assignments of property thus sold; and for that purpose he and they may execute all necessary or proper deeds and instruments and acts of assignment and transfer, and may substitute one or more persons with like power, the Company hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof.

Any such sale or sales made under, or by virtue of, this indenture, whether under the power of sale herein granted and conferred, or under, or by virtue of, judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Company of, and to the premises and property sold, and shall be a perpetual bar, both at law and in equity, against the Company, its successors and assigns, and against any and all persons claiming or to claim the premises and property sold, or any part thereof, from, through or under the Company, its successors or assigns.

Section 9. The receipt of the Trustee shall be a sufficient discharge to any purchaser of the property, or any part thereof, sold as aforesaid, for the purchase money, and no such purchaser, or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see

to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever, be answerable for any loss, misapplication or non-application of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 10. In case of any sale of the trust estate or any part thereof as aforesaid, the principal of all the bonds, if not previously due, shall immediately thereupon become and be due, and payable, anything in said bonds or in this indenture contained to the contrary notwithstanding.

Section 11. The purchase money, proceeds and avails of any sale of the trust estate, together with any other sums which then may be held by the Trustee under any of the provisions of this indenture as part of the trust estate or of the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, his agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee in managing and maintaining the trust estate, and to the payment of all taxes, assessments or other superior liens subject to which such sale shall have been made.

Second. To the payment of the whole amount then owing or unpaid upon the bonds for principal and interest, with interest at the rate of six per cent. per annum on the overdue instalments of interest, and in case such proceeds shall be in-

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sufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any instalment of interest over any other instalment of interest, ratably to the aggregate of such principal and the accrued and unpaid interest, subject, however, to the provisions of Section 1 of this Article.

Third. To the payment of the surplus, if any, to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Section 12. In case of any sale as aforesaid, of the trust estate, any purchaser for the purpose of making settlement or payment for the property purchased, shall be entitled to turn in any bonds and any matured and unpaid coupons, in order that there may be credited, as paid, thereon, the sums payable out of the net proceeds of such sale to the holder of such bonds and coupons, at his ratable share of such net proceeds, after allowing for the proportion of the total purchase price required to pay the costs and expenses of the sale, or otherwise; and such purchaser shall be credited, on account of the purchase price of the property purchased, with the sums payable out of such net proceeds on the bonds and coupons so turned in; and, at any such sale, the Trustee or any bondholders may bid for, and purchase, such property, and may make payment on account thereof as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

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Section 13. The Company covenants that

(1) In case default shall be made in the payment of any interest on any bonds at any time outstanding, and such default shall have continued for a period of two months, or

(2) In case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether at the maturity of said bonds, or by declaration as authorized by this indenture, or upon a sale of the trust estate,

then upon demand of the Trustee, the Company agrees to pay to the Trustee for the benefit of the holders of the bonds and coupons, then outstanding, the whole amount due and payable on such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest upon the overdue instalments of interest at the rate of six per cent. per annum; and in case the Company shall fail to pay the same forthwith upon such demand, the Trustee, in his own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before, or after, or during the pendency of, any proceedings for the enforcement of the lien of this indenture upon the trust estate, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien hereof; and in case of a sale of the trust estate and of the application of the proceeds of sale

and of the application of the proceeds of sale to the payment of the indebtedness secured by this indenture, the Trustee in his own name and as trustee of an express trust shall be entitled to enforce payment of, and to receive, all amounts then remaining due and unpaid upon any and all of the bonds then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee shall in any manner or to any extent, affect the lien of the Trustee upon the trust estate or any part thereof, or any rights, powers or remedies of the holders of the bonds; but such lien, rights, powers and remedies shall continue unimpaired as before.

All moneys collected by the Trustee under this Section shall be applied by the Trustee, first to the payment, at the option of the Trustee, of the costs and expenses of the proceedings resulting in the collection of such moneys, and of the expenses paid or incurred by the Trustee in theretofore managing and maintaining the trust estate, and then to the payment of the amounts then due and unpaid upon such bonds and coupons respectively, without any preference or priority of any kind, except as provided in Section 1 of this Article, and ratably according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys.

Section 14. The Company will not, at any time, insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force in any locality where the trust estate, or any part thereof, may or

shall be situate, or in which this indenture may be sought to be enforced, nor will it claim, take, or insist on, any benefit or advantage from any law now or hereafter in force, providing for the valuation or appraisement of the trust estate, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to the decree of any court or competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by the United States of America or by any state or territory thereof, to redeem the property so sold or any part thereof; and the Company hereby expressly waives all benefit and advantage of any such law or laws; and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

Section 15. Whenever any judicial proceedings shall be commenced to enforce any right of the Trustee or of the bondholders under this indenture, then the Trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustee upon the happening of any event of default.

Section 16. The Company, at any time before full payment of the bonds, and whenever it shall deem it expedient for better protection and security of such bonds (although there be then no default entitling the Trustee to exercise the rights and powers conferred by Section 1 of this Article), may, with the consent

of the Trustee, surrender and deliver to the Trustee full possession of the whole or any part of the trust estate for any period fixed or indefinite. In such event the Trustee shall enter into and upon the premises so surrendered and delivered, and shall take and receive possession thereof for such period fixed or indefinite, as aforesaid, without prejudice, however, to his right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession and to exercise any such right, though beyond the expiration of any prescribed period, and the Trustee, from the time of its entry, shall work, maintain, use, manage, control and employ the premises and property into which he shall so enter in accordance with the provisions of this indenture, and shall receive and apply the income and revenues thereof and otherwise of the trust estate as provided in Section 1 of this Article.

Section 17. Except as herein expressly provided to the contrary, no remedy herein conferred upon, or reserved to, the Trustee, or to the holders of bonds, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

Section 18. No delay or omission of the Trustee or of any bondholder to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trustee or to the bondholders may be exercised from time

to time, and as often as may be deemed expedient by the Trustee or by the bondholders severally and respectively.

## ARTICLE V.

Section 1. Any request or other instrument required by this indenture to be signed or executed by bondholders, may be in any number of concurrent documents of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of any instrument appointing any such agent, or of the holding by any person of bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and, if made in the manner provided in this Article, shall be conclusive in favor of the Trustee, with regard to any action taken by him under such request or other instrument.

Section 2. The fact and date of the execution by any person of any such request, or of any such instrument, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution duly sworn to before any such notary public or other officer.

Section 3. The amount of bonds transferable by delivery, held by any person executing any such request or other instrument as a bondholder, and the amounts and denoting numbers of the bonds held by such person, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank,

bankers, or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depositary, or exhibited to it, the bonds therein described.

Section 4. Any bonds which may at any time be held by the Trustee for account of a sinking fund that may be created for the future security of holders of the bonds secured by this mortgage shall not be deemed outstanding in determining the amount of bonds prescribed for any action by bondholders under any provision of this indenture.

Section 5. The Trustee is hereby constituted and appointed the duly authorized representative and attorney of the holders of the bonds for every purpose connected with or arising out of the enforcement of the security thereof or of the collection of the debt represented by the bonds or any of them, or in pursuance of the terms and covenants hereof or intended to be for the benefit of the holders of the bonds.

## ARTICLE VI.

Section 1. No delay or omission of the Trustee, or the holders of the bonds secured hereby, to exercise any rights or powers arising herefrom, as herein provided, in case of any default happening and continuing, shall be held to exhaust or impair such rights or powers, or be construed to be a waiver thereof or of such default. The Trustee may execute any of the trusts or powers hereof, and perform any duty hereby required, by or through his attorneys, officers, agents or servants, and shall be entitled to advice of counsel in all matters concerning

the trusts hereof and his duties hereunder, and the Trustee shall be answerable only for his own acts, receipts, neglects and defaults, and not for those of any person employed by him and selected with reasonable care, nor for loss unless the same shall happen through his own wilful default. The Trustee shall not be responsible for the recitals herein contained, or for insuring the trust estate or any part thereof or renewing any policies of insurance, or for the execution, recording or validity of the bonds issued under or intended to be secured hereby, or for the sufficiency of the security comprised in the same or for keeping down taxes, charges, assessments or liens upon the trust estate, or otherwise as to the maintenance of this security, or be bound to ascertain or inquire as to the performance or observance of any of the covenants or agreements on the part of the Company, or as to the payment or discharge of taxes, charges, assessments or liens in respect of the trust estate or otherwise; but the Trustee may, in its discretion, make or renew any such insurance or pay and discharge any such taxes, charges, assessments, liens and insurance moneys in case of any default in respect thereof by the Company, and the Trustee may require the Company to keep him fully informed and advised as to the performance of the covenants and agreements aforesaid, and as to the condition of the trust property. The Trustee shall at all reasonable times during the continuance of this security be at liberty, by his officers and agents, to enter upon and inspect the trust estate, and the Company shall facilitate such inspection and furnish the Trustee with such information in regard to the

premises as the Trustee from time to time may desire. The Trustee shall be authorized in all cases to pay such reasonable remuneration as he shall deem proper to all attorneys, officers, agents, servants and employees that he may reasonably employ in the management of the trusts and powers hereof, and all such remuneration and all other reasonable expenses and disbursements of the Trustee, including his own reasonable remuneration, shall be paid by the Company or out of the mortgaged premises, upon which they are hereby charged, and they shall constitute a lien thereon prior to the lien of the bonds. The Trustee shall not be bound to recognize any person as a holder of bonds secured hereby, or to take any action at his request, unless such bonds shall be deposited with the Trustee, or submitted to his inspection. The Trustee shall not be compelled to do any act under this indenture unless reasonably indemnified against loss, cost, liability and expense.

Section 2. The Trustee may at any time, in his discretion, and shall, at the request in writing of the holders of three-fourths of the bonds, and upon being paid its reasonable charges and expenses, resign the said trusts by filing his resignation with the president or treasurer of the Company, and publishing notice thereof once a week for three successive weeks in one or more newspapers published in each of the cities of Jersey City, New Jersey, and New York, New York, and such resignation shall take effect upon the appointment of a new Trustee. In case of the death, incapacity or resignation of the Trustee, a new Trustee may be appointed by the holders of a majority of the bonds outstanding. The clauses herein con-

tained and referring to the Trustee shall extend and be applicable to the trustee for the time being of these presents. Every such trustee shall be exempt from giving any bond or surety in respect of the execution of said trusts or powers or otherwise in respect of the premises.

Until a new trustee shall be appointed by the bondholders as herein authorized, the Company, by an instrument executed by order of its board of directors, under its corporate seal, may appoint such successor trustee; the Company shall thereupon publish notice of such appointment at least twice a week for three consecutive weeks in one or more newspapers of general circulation in the city of Jersey City, New Jersey, and New York, New York, but any new trustee so appointed by the Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds.

## ARTICLE VII.

Section 1. All the covenants, stipulations, promises and agreements, in this indenture contained, by or in behalf of the Company, shall bind its successors and assigns, whether so expressed or not.

Section 2. For every purpose of this indenture, the term "Company" shall include and mean not only the party of the first part hereto, but also any successor corporation. Every such successor corporation shall possess, and from time to time may exercise, each and every right and power hereunder of Metropolitan Steamship Company, the party of the first part hereto, in its name or otherwise.

*Exhibit C. 188.*

Section 3. Any act or proceeding by any provision of this indenture required to be done or performed by any board or officer of the Company, shall and may be done and performed with like force and effect by the like board or officer of any corporation that shall at the time be such lawful successor of the Company.

Section 4. Except when otherwise indicated, the words "the Trustee," or any other equivalent term, as used in this indenture, shall be held and construed to mean the trustee or trustees hereunder, for the time being, whether original or successor; the term "bond" or "bonds" means the bond or bonds issued under and in pursuance of this indenture and for the time being outstanding, and the words "Trustee," "bond," "bondholder" and "holder" shall include the plural as well as the singular number, and the term "majority" shall signify majority in amount.

Section 5. In order to facilitate the record of this indenture, the same may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

ALFRED C. GREENING, Trustee, party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

In Witness Whereof METROPOLITAN STEAMSHIP COMPANY, the party of the first part, has caused this indenture to be signed and acknowledged or proved by its President or a Vice-President, and its corporate seal to be hereunto affixed, and attested by the signature of its Secretary, and ALFRED C. GREENING, the

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party of the second part, has signed and acknowledged this indenture, as of the tenth day of October, 1910.

METROPOLITAN STEAMSHIP COMPANY,

By

J. TURNER GRIEVE,
*President.*

Attest:

(SEAL) DOUGLAS NICHOLSON,
*Secretary.*

ALFRED C. GREENING (L. S.)

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } *ss.*

On the tenth day of October in the year 1910, before me personally came J. Turner Grieve and Douglas Nicholson, each to me known, and being by me duly sworn they did depose each for himself, the said Grieve that he resides in the county of Queens, city and State of New York, and is President of Metropolitan Steamship Company, the corporation described in and which executed the foregoing instrument, and that he subscribed his name thereto by the authority of the Board of Directors of said corporation; and the said Nicholson that he resides in the city, county and State of New York, and is Secretary of said Metropolitan Steamship Company and subscribed his name to the foregoing agreement by like authority, and both the said Grieve and the said Nicholson that they know the seal of said corporation, that the seal affixed to said agreement is such corporate seal, and that it was affixed to the foregoing instrument by au-

*Exhibit C. 188.*

thority of the Board of Directors of said corporation, and the said Grieve as President, in the name and behalf of said corporation acknowledged the foregoing to be the free act and deed thereof.

(Notary's Seal)

CAROLINE D. PLAGE,
*Notary Public Kings County,*
Certificate filed in New York County.
Cert. filed in New York County
Register's Office No. 1074.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.*

On the tenth day of October in the year 1910, before me personally came Alfred C. Greening, to me known, and being by me duly sworn did depose and say, that he resides in the town of Montclair, State of New Jersey, and is the same person named in the foregoing instrument as Trustee, and that he subscribed his name to the foregoing instrument as his free act and deed.

(Notary's Seal)

CAROLINE D. PLAGE,
*Notary Public Kings County,*

Certificate filed in New York County.
Certificates of enrollment of SS.
Yale and Harvard attached.

## Exhibit C. 189.

Sinking fund agreement between Metropolitan Steamship Company, Alfred C. Greening, trustee, and Pacific Navigation Company.

FORM OF SINKING FUND AGREEMENT

INDENTURE to be known as "Metropolitan Steamship Company Second Mortgage Six Per Cent. Five Year Bonds Sinking Fund Agreement," between METROPOLITAN STEAMSHIP COMPANY, a corporation organized and existing under the laws of the State of New Jersey, (hereinafter called the "Steamship Company"), party of the first part, ALFRED C. GREENING, of the town of Montclair in the State of New Jersey, as Trustee, (hereinafter called the "Trustee"), party of the second part, and PACIFIC NAVIGATION COMPANY, a corporation organized and existing under the laws of the State of New Jersey, (hereinafter called the "Navigation Company"), party of the third part:

WHEREAS the Steamship Company has contemporaneously herewith executed a mortgage to Alfred C. Greening, as Trustee, to secure its Second Mortgage Six Per Cent. Five Year Bonds to the aggregate principal amount of Seven Hundred and Fifty Thousand Dollars, which mortgage is by reference hereby made a part of this indenture; and

WHEREAS the Steamship Company has entered into an indenture with the Pacific Navigation Company, a copy of which is hereto attached as Exhibit "A"; and

WHEREAS in order to induce the purchase of said Second Mortgage Six Per Cent. Five Year Bonds, the Steamship Company has determined

to create a sinking fund for the further security of the holders of said bonds through the application for that purpose of money to be received by the Steamship Company from the Pacific Navigation Company under said indenture, Exhibit "A"; and

WHEREAS the Pacific Navigation Company has agreed on its part to such application of such money:

NOW, THEREFORE, Metropolitan Steamship Company, for the considerations stated in said mortgage to Alfred C. Greening, Trustee, (to which mortgage this indenture is intended to be supplemental) hereby assigns and transfers unto the said Alfred C. Greening as Trustee all its right and claims to all sums of money (except the first six monthly payments) to be paid to the Steamship Company as guaranteed net earnings by the Pacific Navigation Company under and in accordance with the terms of said indenture hereto annexed as Exhibit "A"; in trust, however, upon and subject to the following terms and conditions:

ARTICLE I.

The Trustee is to direct the Navigation Company, in the name and behalf of the Steamship Company under the provisions of said indenture, Exhibit "A", to deposit in bank said sums as due monthly to the Steamship Company from the Navigation Company, so that the same shall be applied with the following preferences:

First: To the payment of such taxes in the State of New Jersey or under the laws of the United States of America as are necessarily payable by the Steamship Company.

*Exhibit C. 189.*

Second: To the payment of the necessary organization expenses of the Steamship Company.

Third: To the payment when due of interest on the First Mortgage Five Per Cent. Thirty Year Sinking Fund Bonds of the Steamship Company, secured by its mortgage to American Trust Company dated November 15, 1909:

Fourth: To the payment when due of any amount payable by the Steamship Company into the Sinking Fund provided for by its said First Mortgage to American Trust Company;

Fifth: To the payment of premiums for the insurance required to be taken out by the Steamship Company under the provisions of said First Mortgage to American Trust Company;

Sixth: To the payment when due of interest on the Second Mortgage Six Per Cent. Five Year Bonds of the Steamship Company;

Seventh: To the purchase or payment of all claims against the Steamship Company which would otherwise be likely to create liens upon the steamships "Yale" or "Harvard", prior to the lien of said Second Mortgage to Alfred C. Greening, Trustee, of even date herewith;

Eighth: To constitute out of the balance remaining after full provision for all the purposes specified in the seven preceding clauses a Sinking Fund for the further equal pro rata security of holders of said Second Mortgage Six Per Cent. Five Year Bonds of the Steamship Company.

The money applicable by the Trustee to the creation of such Sinking Fund shall be applied by the Trustee as the Board of Directors of the Steamship Company may by resolution direct:

*Exhibit C. 189.*

(a) To the purchase of such Second Mortgage Six Per Cent. Five Year Bonds of the Steamship Company for the Sinking Fund after publishing invitations in the manner hereinafter provided for tenders of such bonds; or

(b) To the purchase of bonds in the open market at prices not in excess of a price to be designated by the Board of Directors of the Steamship Company, but not above one hundred and five and accrued interest.

In the event that the Board of Directors of the Steamship Company shall direct the Trustees to purchase bonds after publishing invitations for tenders of such bonds, the Trustee shall cause to be published in one daily newspaper in the city of New York, once in each week for four successive weeks, a notice inviting tenders of bonds for sale, and upon receipt of such tenders the lowest tenders shall be accepted and bonds purchased to the extent of the money then in the Sinking Fund; provided, however, that no tender shall be accepted at a price above that designated by the Board of Directors, which price shall not be above one hundred and five and accrued interest.

The bonds held by the Trustee for account of the Sinking Fund shall not be deemed outstanding in determining the amount of bonds prescribed for action by bondholders under any provisions of this indenture.

When the principal and interest of all other bonds shall have been paid in full or moneys deposited for their redemption, and all payments to the Trustee or otherwise called for by any of the provisions of this indenture shall have been made by the Steamship Company, the Trustee shall, on written demand, pay to the Steamship Company all moneys held in the Sinking

Fund, and all the bonds held in the Sinking Fund shall forthwith be canceled by the Trustee, and ing been so canceled shall thereafter be physically destroyed in the presence of a representative of the Trustee and a representative of the Steamship Company.

ARTICLE II.

In case the Trustee shall cease to be Trustee under said Second Mortgage of the Steamship Company of even date herewith, he shall at the same time cease to be Trustee hereunder, and whenever a new Trustee shall be appointed under said Second Mortgage, he shall thereupon become and be also Trustee hereunder. All the provisions of said Second Mortgage with regard to the powers, duties, obligations and liabilities of the Trustee shall so far as applicable be considered as repeated in this indenture with regard to the trusts hereby created.

Alfred C. Greening, Trustee, party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions herebefore set forth.

Pacific Navigation Company, party hereto of the third part, hereby assents to the above transfer and assignment to the party of the second part, and agrees to make the payments to be made by it as guaranteed net earnings under this indenture, Exhibit "A", in the manner herein above provided.

In Witness Whereof Metropolitan Steamship Company, party of the first part, has caused this indenture to be signed and acknowledged or proved by its President and its corporate

*Exhibit C. 190.*

seal to be hereunto affixed and attested by its Secretary; Alfred C. Greening, party of the second part, has signed and acknowledged or proved this indenture as Trustee; and Pacific Navigation Company, party of the third part, has caused this indenture to be signed and acknowledged or proved by its President and its corporate seal to be hereunto affixed and attested by its Secretary, on the 10th day of October, 1910.

METROPOLITAN STEAMSHIP COMPANY,

By

_____

*President.*

Attest:

*Secretary.*

_____

*Trustee.*

PACIFIC NAVIGATION COMPANY,

By

_____

*President.*

Attest:

*Secretary.*

**Exhibit C. 190.**

Letter Warren D. Chase to Alfred C. Greening, dated October 12, 1912. (Printed on page 193 of record.)

## Exhibit C. 191.

Formal request by Douglas Nicholson to Alfred C. Greening. (Not printed.)

## Exhibit C. 192.

Check stub book of Alfred C. Greening, trustee. (Not printed.)

## Exhibit C. 194.

Certificate of incorporation of Eastern Steamship Corporation.

Portland, Maine, May 3, 1912.

To the Honorable Secretary of State
of the State of Maine:

The Eastern Steamship Corporation Hereby Certifies:

That at a special meeting of the stockholders of said corporation duly called for the purpose and held this day at No. 85 Exchange street, Portland, Maine, the capital stock of the Eastern Steamship Corporation was increased from $6,075,000 to $9,000,000.

To effect said increase the following votes were passed:

"Voted:

That it is the finding, and is hereby declared to be the finding of the stockholders of this company, that the amount of its capital stock is insufficient for the purposes for which said corporation was organized, and that the purposes for which this corporation was organized require that the capital stock be inceased from $6,075,000 to $9,000,000, by adding to the common stock

*Exhibit C. 194.*

$2,925,000, divided into 58,500 common shares of the par value of $50.00 each, so that the capital stock after said increase shall consist of preferred stock, $3,000,000, divided into 30,000 shares of the par value of $100 each, and common stock $6,000,000, divided into 120,000 shares of the par value of $50.00 each."

"VOTED:

That the capital stock of this corporation be and it hereby is, increased from $6,075,000 to $9,000,000, by adding to the common stock $2,925,000, divided into 58,500 common shares of the par value of $50.00 each, so that the capital stock after said increase shall consist of preferred stock $3,000,000, divided into 30,000 shares of the par value of $100, and common stock $6,000,000, divided into 120,000 shares of the par value of $50.00 each."

"VOTED:

That the first paragraph of Article II of the by-laws be, and it hereby is, amended to read as follows:

> "The authorized capital stock of this corporation shall be $9,000,000, and shall be divided into 150,000 shares. Of such authorized capital stock 30,000 shares, the par value of which shall be $100. each, amounting at par to $3,000,000, shall be preferred stock, and 120,000 shares, the par value of which shall be $50.00 each, amounting at par to $6,000,000, shall be common stock."

In case of all the foregoing votes action was taken by stock vote, whereupon it appeared that 85,711 shares, out of a total issue of 91,500

*Exhibit C. 194.*

shares, were voted in the affirmation; no shares being voted in the negative.

EASTERN STEAMSHIP CORPORATION,

By

AARON B. COLE,
*Clerk.*

STATE OF MAINE.
Office of Secretary of State.
Augusta, May 4, 1912.
Received and filed this day.

Attest:
J. E. ALEXANDER,
Deputy Secretary of State.
Recorded Vol. 9 Pages 321-2

Eliot, Maine, February 19, 1913.

*To the Honorable Secretary of State of the State of Maine:*

THIS IS TO CERTIFY:

That at the annual meeting of the stockholders of the

EASTERN STEAMSHIP CORPORATION

duly called and held for the purpose at the office of C. A. Hight, Portland, Maine, on Wednesday, the nineteenth day of February, 1913, at twelve o'clock noon, the authorized capital stock of the corporation was decreased, by changing and reducing the par value of the common shares of the corporation, so that the authorized capital stock formerly amounting to $9,000,000, divided into 30,000 preferred shares of the par value of $100. each, and 120,000 common shares of the par value of $50. each, now amounts, after said vote of decrease and change, to $6,000,000, di-

vided into 30,000 preferred shares of the par value of $100. each, and 120,000 common shares of the par value of $25. each.

To effect said decrease of capital stock and reduction of the par value of the common shares, the following action was taken:

"On motion duly seconded it was

VOTED:

That the authorized capital stock of this corporation be, and it hereby is, decreased, by changing and reducing the par value of the common shares of the corporation so that the authorized capital stock, which at present amounts to $9,000,000, divided into 30,000 preferred shares of the par value of $100 each ($3,000,000), and 120,000 common shares of the par value of $50. each ($6,000,000), shall, after said decrease and change, amount to $6,000,000, divided into 30,000 preferred shares of the par value of $100. each ($3,000,000), and 120,000 common shares of the par value of $25. each $3,000,000).

The foregoing vote was taken by stock vote, whereupon it appeared that 89,079 shares, out of a total issued capital of 97,500 shares, were voted in the affirmative, no shares being voted in the negative; and it further appeared that of the stock so voted in the affirmative, 61,763 shares were common shares and 27,316 shares were preferred shares, being more than 75% of each class of stock.

On motion duly seconded it was

VOTED:

That the first paragraph of Article II of the by-laws be, and hereby is, amended to read as follows:

"ARTICLE II. CAPITAL STOCK.

The authorized capital stock of this corporation shall be $6,000,000, and shall be

*Exhibit C. 194.*

divided into 150,000 shares. Of such authorized capital stock, 30,000 shares, the par value of which shall be $100, each, amounting at par to $3,000,000, shall be preferred stock, and 120,000, the par value of which shall be $25. each, amounting at par to $3,000,000, shall be common stock."

The foregoing vote was taken by stock vote, whereupon it appeared that 89,079 shares, out of a total issued capital of 97,500 shares, were voted in the affirmative, no shares being voted in the negative; and it further appeared that of the stock so voted in the affirmative, 61,763 shares were common shares and 27,316 shares were preferred shares, being more than 75% of each class of stock.

On motion duly seconded it was ,

VOTED:

That the Clerk of this corporation be, and he hereby is, authorized to file forthwith with the Secretary of State such certificate as may be required by law showing the decrease in the capital stock of the corporation by reduction of the par value of the common shares."

Attest:

AARON B. COLE,
CLERK EASTERN STEAMSHIP CORPORATION.

STATE OF MAINE.
Office of Secretary of State.
Augusta, Feb. 21, 1913.
Received and filed this day.

Attest: J. E. ALEXANDER,
*Secretary of State.*

Recorded Vol. 10 Pages 8-9

*Exhibit C. 194.*

## STATE OF MAINE.

### Certificate of Organization of a Corporation under the General Law.

The undersigned, officers of a corporation organized at Kittery, Maine, at a meeting of the signers of the articles of agreement therefor, duly called and held at Kittery, county of York, state of Maine, on Wednesday the 27th day of December, A. D. 1911, hereby certify as follows:

The name of said corporation is Eastern Steamship Corporation.

The purposes of said corporation are

To carry on the business of building, acquiring, owning, controlling, chartering, managing, operating, selling and otherwise disposing of, steamships, barges, sailing vessels, and vessels and boat of all sorts used for, or in connection with, the transportation, by water, of passengers and freight, or in connection with any marine work whatsoever; to engage in the carriage of passengers or freight, or both, upon the high seas, or from a port or ports in this state, to a foreign port or ports, or to a port or ports in other states, or upon any waters where this corporation may navigate; to make and enter into any and all legal contracts, with reference to, and in course of the prosecution of, the business herein described, with power to establish and collect, tolls and fares for services performed in carrying on such business;

To construct, acquire, own and lease, manage and operate, ship building plants and construction plants of all sorts, marine railways, dry docks, wharves, docks, elevators, warehouses, storage houses, hotels, terminal properties and facilities, water ways and rights, canals and properties of a similar nature, and to contribute

*Exhibit C. 194.*

to, subsidize or otherwise become interested in, any such works, plants, properties, structures or operations; to purchase, acquire by subscription or otherwise, and hold for investment or otherwise, use, sell, assign, transfer, mortgage, pledge or otherwise dispose of, any shares of stock, bonds, securities or other obligations of any other corporation or association of this or any other state, territory or country; to aid in any manner any such corporation or association in whose shares of stock, bonds or other obligations this company may be interested, and to do any other act or thing permitted by law for the preservation, protection, improvement or enhancement of the value of such shares of stock, bonds, securities or other obligations, and while the owner of such shares of stock, bonds, securities or other obligations, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon;

To acquire, hold and own, develop, manage, operate and dispose of, any or all real or personal property, within or without the state of Maine, necessary for, or incidental to, the purposes of this company, or any of them, including patents, patent rights, trade marks, copyrights, trade names, and rights and property of a similar nature;

To issue from time to time, when and as may be convenient for the accomplishment of the purposes of the company, or any of them, notes, debentures, bonds and other securities and obligations of the company, and if deemed advisable, to secure the same by mortgage or indenture of trust of any or all the property of the corporation or otherwise:

To issue as preferred stock such part of its capital stock as shall be fixed and determined

in the by-laws, and to fix and determine in its by-laws the designations, preferences, and voting powers, restrictions and qualifications of its classes of stock;

To acquire and undertake the whole or any part of the business, property, assets and liabilities of any person, firm or corporation, or association, carrying on any business similar to any business which this corporation is authorized to carry on; or capable of being conveniently carried on in connection therewith; to make, enter into and guarantee, contracts incidental to the business of the company, with any individual, firm, association or corporation, private, public or municipal, or with the Government of the United States of America, or any state, territory or colony thereof, or any foreign Government, for the purposes of attaining or furthering any of the purposes herein set forth; Each of the purposes hereinbefore set forth is hereby expressly stated to be a special purpose or business of the corporation; it being the purpose of the company to do any or all of the above things, or any part thereof, as principal, agent, contractor or otherwise, and by or through agents or otherwise, and either alone or in conjunction with others, and to do any and all things necessary for, or incidental to, the prosecution of the purposes herein contained, or any of them, and not inconsistent with the laws of the state of Maine.

The amount of capital stock is six million, seventy-five thousand dollars ($6,075,000).

The amount of common stock is three million, seventy-five thousand dollars ($3,075,000).

The amount of preferred stock is three million dollars ($3,000,000).

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The amount of capital stock already paid in is nothing.

The par value of the common shares is fifty dollars ($50.00).

The par value of the preferred shares is one hundred dollars ($100.00) each.

The names and residences of the owners of said shares are as follows:

| Names. | Residences. | No. of Shares. Common. |
|---|---|---|
| H. A. Ham, | Melrose, Mass. | One. |
| Walter W. Strangman, | Boston, Mass. | One. |
| E. C. Ramsdell, | Boston, Mass. | One. |
| P. E. Coyle, | Brookline, Mass. | One. |
| John W. Brophy, | Boston, Mass. | One. |
| H. F. Pearsall, | Dorchester, Mass. | One. |
| Frederick *W.* Jones, | Boston, Mass. | One. |
| E. P. Thompson, | Winchester, Mass. | One. |
| Aaron B. Cole, | Eliot, Maine | One. |

Leaving in the treasury, unsubscribed for, 91,491 shares.

Said corporation is located at Eliot, in the County of York, Maine.

The number of directors is nine, and their names are: H. A. Ham, Melrose, Mass.; Walter W. Strangman, Boston, Mass.; E. C. Ramsdell, Boston, Mass.; P. E. Coyle, Brookline, Mass.; John W. Brophy, Boston, Mass.; H. F. Pearsall, Dorchester, Mass.; Frederick *W.* Jones, Boston, Mass.; E. P. Thompson, Winchester, Mass.; Aaron B. Cole, Eliot, Maine.

The name of the clerk is Aaron B. Cole, and his residence is Eliot, Maine.

The undersigned, Frederick *W.* Jones, is president; the undersigned, Aaron B. Cole, is treasurer, and the undersigned, Frederick *W.* Jones, Aaron B. Cole, P. E. Coyle, John W. Brophy,

H. F. Pearsall, are a majority of the directors of said corporation.

Witness our hands this twenty-seventh day of December, A. D. 1911.

FREDERICK A. JONES, *President.*
AARON B. COLE, *Treasurer.*

FREDERICK A. JONES,
AARON B. COLE,
JOHN W. BROPHY,
H. F. PEARSALL,
P. E. COYLE,
} *Directors.*

STATE OF MAINE,
YORK. } *ss:*

Eliot, December 27, 1911.

Then personally appeared Frederick A. Jones, Aaron B. Cole, John W. Brophy, H. F. Pearsall and P. E. Coyle, and severally made oath to the foregoing certificate, that the same is true.

Before me,

MARK W. PAUL,
*Justice of the Peace.*

STATE OF MAINE.

ATTORNEY GENERAL'S OFFICE.

December 28, 1911.

I hereby certify that I have examined the foregoing certificate, and the same is properly drawn and signed, and is conformable to the constitution and laws of the State.

W. R. PATTANGALL,
*Attorney General.*

*Exhibit C. 194.*

(Copy.)

(Name of corporation) Eastern Steamship Corporation.

York, *ss.* Registry of Deeds.

Received Dec. 30, 1911, at 9 h. 16 m. A. M.

Recorded in Vol. 14, page 373.

ATTEST:

HOWARD BRACKETT,
*Register.*

A true copy of record.

ATTEST:

HOWARD BRACKETT,
*Register.*

STATE OF MAINE.

OFFICE OF SECRETARY OF STATE.

Augusta, Jan. 1, 1912.

Received and filed this day.

ATTEST:

J. E. ALEXANDER,
*Deputy Secretary of State.*

Recorded in Vol. 79, page 377.

*Exhibit C. 195.*

STATE OF MAINE.

OFFICE OF SECRETARY OF STATE.

I hereby certify that the foregoing is a true copy from the records of this office.

IN WITNESS WHEREOF, I have caused the seal of the State to be hereunto affixed.

Given under my hand at Augusta, this eighth day of January, in the year of our Lord one thousand nine [SEAL] hundred and seventeen, and in the one hundred and forty-first year of the Independence of the United States of America.

JOHN E. BAMBER,
*Secretary of State.*

## Exhibit C. 195.

Contract between Douglas Nicholson and Edward T. Canfield, dated March 5, 1910.

AGREEMENT between DOUGLAS NICHOLSON and EDWARD T. CANFIELD.

Douglas Nicholson agrees to sell and does hereby sell unto Edward T. Canfield the following securities, to wit: Ten-year non-interest-bearing gold notes of the Metropolitan Steamship Company, a Corporation organized and existing under the Laws of the State of New Jersey, payable to bearer, of the face value of Six hundred eighty-three thousand, eight hundred ninety-five and 21/100 Dollars, (683,895.21); two year notes of the said Metropolitan Steamship Company of the face value of Five hundred thousand Dollars, (500,000.00); Six hundred fifty-three (653) first mortgage five per cent. sink-

*Exhibit C. 195.*

ing fund gold bonds of the said Metropolitan Steamship Company for One thousand dollars each; and demand notes of the face value of Three hundred seventy-five thousand nine hundred twenty-three and 14/100 Dollars, (375, 923.14); for the sum of One Million Five Hundred Thousand Dollars, ($1,500,000.00.), and in consideration of the payment of said sum of One Million Five Hundred Thousand Dollars hereby assigns and transfers unto the said Canfield and his assigns holding said securities hereby sold, the benefit of the guaranties of Assets Realization Company set forth in an agreement between Douglas Nicholson and Assets Realization Company, a copy of which is hereto attached, and covenants that the said Edward T. Canfield and his assigns may use the name of the said Douglas Nicholson in any proceedings necessary or proper in order to enforce, for the benefit of the holders of the securities hereby sold, the said guaranties; the said Nicholson, however, reserving unto himself the right also to enforce said guaranties for the benefit of himself or assigns as holders of stock of Metropolitan Steamship Company, a corporation of New Jersey.

IN WITNESS WHEREOF the said Douglas Nicholson and the said Edward T. Canfield have hereunto set their hands and seals on this 5th day of March, 1910.

DOUGLAS NICHOLSON (L. S.)
EDWARD T. CANFIELD (L. S.)

## Exhibit C. 196.

Certificate of incorporation of the Pacific Company.

[STATE SEAL]

STATE OF CONNECTICUT,
Office of the Secretary.

THE PACIFIC COMPANY.

CERTIFICATE OF INCORPORATION.

We, the subscribers, certify that we do hereby associate ourselves as a body politic and corporate under the statute laws of the State of Connecticut, and we further certify:

First. That the name of the corporation is The Pacific Company.

Second. That said corporation is to be located in the town of Hartford, in the state of Connecticut.

Third. That the nature of the business to be transacted, and the purposes to be promoted or carried out, by said corporation, are as follows:

To carry on the business of engaging, receiving, transporting and delivering merchandise upon freight, or for hire, between any port or ports in the United States and any foreign port or ports, or between any port of the United States, and any other port or ports, and any port or ports of the United States (any of said voyages to be made direct or via port or ports); the business of chartering vessels therefor; the business of operating vessels in such service; the business of acting as agents for vessels employed in such service; the business of contracting or arranging for the transportation of cargo to or from any of such ports by rail or boat, or otherwise, from or to any inland or

*Exhibit C. 196.*

coastwise place or places; the business of contracting with others, and employing necessary labor and purchasing necessary material for the performance and accomplishment of the said objects or any of them; to hold, purchase or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock and bonds, debentures or other evidences of indebtedness created by other corporation or corporations, and, while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

Fourth. That the amount of the capital stock of said corporation hereby authorized is one million, one hundred thousand dollars, divided into eleven thousand shares of the par value of one hundred dollars each, which stock shall be divided into classes as follows: Eighty-five hundred shares of common stock of the par value of One hundred dollars each; twenty-five hundred shares of preferred stock of the par value of One hundred dollars each.

The preferred stock shall entitle the holders thereof to receive out of the net earnings, and the corporation shall be bound to pay therefrom, a cumulative dividend at the rate of, but never exceeding, eight (8) per centum per annum, payable before any dividend shall be set apart or paid on the common stock; provided, however, that when a dividend is paid on the preferred stock, the directors shall have power in their discretion to declare and pay a dividend for a like period on the common stock.

The holders of preferred stock shall, in case of liquidation or dissolution of the corporation, be entitled to be paid before any payments shall be made to the holders of common stock the

*Exhibit C. 196.*

amount paid upon their shares and the dividends accumulated and unpaid thereon, but shall not participate in any surplus assets after paying off the whole of the paid-up capital.

The preferred stock may be retired by the company at any time upon payment to the holders of the same of One hundred and ten dollars a share together with all accumulated dividends, if any, and interest at the rate of eight (8) per cent per annum from the date of the last dividend.

The par value of all of the shares of said preferred stock issued and paid for in full at any time may be reduced ratably by the company upon payment to the holders of the same of the amount of the desired reduction, together with a premium of ten (10) per cent upon the amount of said reduction and the payment of all accumulated dividends, if any, upon said stock, and interest at the rate of eight (8) per cent per annum from the date of the last dividend, and thereafter such shares of preferred stock shall be of the par value of One hundred dollars less such reduction or reductions and such shares shall be held and considered as fully paid, and dividends thereafter declared upon said shares shall be at the rate of eight (8) per cent per annum upon such reduced par value.

Successive reductions may be made in the par value of said preferred stock from time to time as the company may desire.

Fifth. That the amount of capital stock with which this corporation shall commence business is One million, one hundred thousand dollars.

Sixth. That the duration of said corporation is unlimited.

*Exhibit C. 196.*

Signatures of Incorporators.

| Name. | Residence. |
|---|---|
| John W Joy, of Hartford | State of Conn. |
| Ernest A. Haling, of East Hartford | State of Conn. |
| Wm. G. Morgan, of Hartford | State of Conn. |

Dated at Hartford, Conn., this 11th day of October, 1910.

STATE OF CONNECTICUT, } *ss.*
COUNTY OF HARTFORD, }

Hartford, October 11, 1910.

Personally appeared John W. Joy, Ernest A. Haling, and William G. Morgan, being all of the incorporators of The Pacific Company, and made solemn oath to the truth of the foregoing certificate by them respectively subscribed, before me,

E. M. SPENCER,
*Notary Public.*

(Seal)

Approved Oct. 11, 1910, 1:10 P. M.
Corporation fee, $550.
Paid Oct. 11, 1910.

STATE OF CONNECTICUT, } *ss.*
OFFICE OF THE SECRETARY, }

The foregoing is a true copy of a certificate filed in this office, and of the endorsement of approval thereon.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of said State, at Hartford, this 20th day of November A. D., 1912.

[SEAL]

ALBERT PHILLIPS,
*Secretary.*

*Exhibits C. 197, C. 198.*

## Exhibit C. 197.

Protest of George A. Fernald & Company. (Printed on page 501 of record.)

## Exhibit C. 198.

Letter, G. W. Apsey to C. W. Morse, dated Sept. 27, 1908.

Wm. T. Cobb, Calvin Austin, A. I. Culver, Receivers Metropolitan S. S. Co.

*METROPOLITAN STEAMSHIP CO.*
INDIA WHARF.

G. W. APSEY,
*Comptroller and Gen'l Auditor.*

Please refer to File No. GWA/D.

Boston, Sept. 27th, 1908.

Mr. C. W. Morse,
1 Nassau St.,
New York City.

Dear Sir:—

Enclosed I send you account of the Metropolitan Steamship Co. for August, 1908.

Sheet 2 is a statement of Receivership operating showing a net profit of $252,781.71, exclusive of bond interest, also statement of receipts and expenses of HARVARD and YALE showing net profit of $311,333.93. Under proper conditions in *freight* traffic, the net earnings of the company for these seven months should have been $75,000.00 additional.

Sheet 3 is a comparative statement Jan. 1st to Aug. 31st, 1907 and 1908, and contains all expenses including interest on bond issue.

*Exhibit C. 198.*

Sheet 4 is a statement of HARVARD and YALE earnings and expenses for August, 1908.

If there is any further information or statements that I can furnish you, I shall be pleased to so do.

G. W. APSEY,
*Comptroller.*

*Exhibits D. 1—D. 7.*

## Defendant's Exhibits.

### Exhibit D. 1.

Letter, C. S. Miller, Pres., to Goodall, Jan. 7, 1910. (Printed on page 1599 of record.)

### Exhibit D. 2.

Minutes, special stockholders' meeting, Maine S. S. Co., Dec. 28, 1911. (Printed on page 1660 of record.)

### Exhibit D. 3.

Minutes, directors' meeting, Maine S. S. Co., May 5, 1911 (Printed on page 1662 of record.)

### Exhibit D. 4.

Minutes, directors' meeting, Maine S. S. Co., May 29, 1911. (Printed on page 1664 of record.)

### Exhibit D. 5.

Minutes, directors' meeting, Maine S. S. Co., Feb. 16, 1912. (Printed on page 1665 of record.)

### Exhibit D. 6.

Minutes, directors' meeting, Maine S. S. Co., July 19, 1912. (Printed on page 1665 of record.)

### Exhibit D. 7.

Minutes, directors' meeting, Hartford & New York Transportation Co., Feb. 6, 1912. (Printed on page 1667 of record.)

*Exhibits D. 8—D. 13.*

## Exhibit D. 8.

Minutes, directors' meeting, Hartford & New York Transportation Co., April 19, 1912. (Printed on page 1669 of record.)

## Exhibit D. 9.

Minutes, directors' meeting, New England Navigation Co., April 18, 1912. (Printed on page 1672 of record.)

## Exhibit D. 10.

Minutes' directors' meeting, New England Navigation Co., October 18, 1912. (Printed on page 1674 of record.)

## Exhibit D. 11.

Minutes, directors' meeting, New England Navigation Co., Nov. 22, 1912. (Printed on page 1675 of record.)

## Exhibit D. 12.

Minutes, directors' meeting, New England Navigation Co., June 27, 1913. (Printed on page 1678 of record.)

## Exhibit D. 13.

Minutes, directors' meeting, New England Navigation Co., Sept. 19, 1913. (Printed on page 1680 of record.)

## Exhibit D. 14.

Minutes, directors' meeting, New England Navigation Co., October 24, 1913. (Printed on page 1681 of record.)

## Exhibit D. 15.

Minutes, directors' meeting, New England Navigation Co., Dec. 10, 1913. (Printed on page 1682 of record.)

## Exhibit D. 16.

Minutes, directors' meeting, N. Y. N. H. & H. R. R. Co., December 13, 1907. (Printed on page 1684 of record.)

## Exhibit D. 17.

Minutes, directors' meeting, N. Y. N. H. & H. R. R. Co., September 18, 1908. (Printed on page 1686 of record.)

## Exhibit D. 18.

Minutes, directors' meeting, N. Y. N. H. & H. R. R. Co., October 10, 1908. (Printed on page 1686 of record.)

## Exhibit D. 19.

Minutes, directors' meeting, N. Y. N. H. & H. R. R. Co., Nov. 21, 1913. (Printed on page 1688 of record.)

## Exhibit D. 20.

Minutes, directors' meeting, N. Y. N. H. & H. R. R. Co., March 25, 1914. (Printed on page 1689 of record.)

*Exhibits D. 21, D. 22.*

## Exhibit D. 21.

Transcript, account of Maine S. S. Co. showing acquisition of Eastern Steamship Corporation securities. (Not printed.)

## Exhibit D. 22.

Directors' minute book No. 1, Metropolitan Steamship Co.

*FIRST MEETING OF DIRECTORS*

*NOVEMBER 19, 1909.*

The First meeting of the Board of Directors of the corporation was held on the 19th day of November, 1909, at six o'clock in the afternoon, at No. 15 Exchange Place, Jersey City, pursuant to a written waiver of notice, signed by all the Directors, fixing said time and place, as follows:

> WE, THE UNDERSIGNED, being all the Directors of the *METROPOLITAN STEAMSHIP COMPANY,* DO HEREBY WAIVE all notice provided by law or by the by-laws, of this meeting of Directors, and fix the 19th day of November, 1909, at six o'clock in the afternoon, at No. 15 Exchange place, Jersey City, New Jersey, as the time and place of said meeting; and do consent to the election of officers; approval of the by-laws; adoption of a seal; to pass upon an offer for the transfer of certain property to this corporation; to provide for the execution and issue of $3,000,000., par value, of bonds of this Company and execution of a mortgage to secure the same, and the execution and issue of $500,000. of

*Exhibit D. 22*—Minutes Nov. 19, 1909.

Two-Year Notes, and any and all other business which may come before the meeting.

Thomas Achenbach
Jesse Meyers
Ernest J. Ellenwood

The following Directors were present in person:

Thomas Achenbach,
Jesse Meyers,
Ernest J. Ellenwood,

being all the Directors of the Company.

The meeting then proceeded to the election of officers. The following officers were nominated:

For President: Thomas Achenbach.

For Secretary and Treasurer: Campbell Carrington.

A vote being had, the said persons were unanimously elected to fill the said respective offices.

On motion duly made and seconded, it was unanimously:

RESOLVED, That until further order of the Board, the Treasurer be relieved from executing any bond.

The Secretary reported to the meeting that certificates of stock had been executed and issued for the stock subscribed for by the incorporators.

*Exhibit D. 22*—Minutes Nov. 19, 1909.

The Secretary then took the following oath of office:

SECRETARY'S OATH.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

CAMPBELL CARRINGTON the Secretary of the *METROPOLITAN STEAMSHIP COMPANY,* being by me duly sworn, does promise and swear, that he will faithfully discharge the duties of Secretary of ths aforesaid Company, to the best of his skill and ability.

CAMPBELL CARRINGTON.

Subscribed and sworn to before me, this 19th day of November, 1909.

SIDNEY A. ANDERSON,
*Commissioner of Deeds for*
[Seal] *New Jersey.*

On motion duly made and seconded, the by-laws adopted at the stockholders' meeting were presented to this meeting and adopted by the Board of Directors.

On motion duly made and seconded, the seal of the corporation was adopted, consisting of the words: "Metropolitan Steamship Company, Corporate Seal. 1909. New Jersey."

[Copy of Seal]

The following offer and agreement of John W. McKinnon, presented and accepted by the stockholders at their meeting held prior to this meeting of the Directors, with the resolutions of the stockholders in relation thereto, were

presented to the meeting. Copies thereof are attached to these minutes.

The following resolution was unanimously adopted:

RESOLVED, That it is the unanimous opinion of the Board of Directors that in their judgment the value of the property acquired for which the stock is issued is more than equal to the par value of the shares of stock issued therefor, and this Board of Directors hereby ratifies and approves the said resolutions of the stockholders and said acceptance of said offer by the said stockholders, and directs that such acceptance in writing in the form submitted to this meeting and signed by the officers as stated in said form, a copy of such form being attached to these minutes, be communicated to the said John W. McKinnon, and that the certificates of stock be issued in accordance therewith.

The Secretary then presented to the meeting a printed form of bond and mortgage approved by the stockholders of this Company at a meeting held this day, being the printed form of bond and mortgage requested to be executed by John W. McKinnon, in accordance with his offer and the acceptance of this Company.

The Secretary also presented to the meeting the minutes of the stockholders' meeting held on the 19th day of November, 1909.

Upon motion duly made and seconded, the following resolution was unanimously voted and adopted:

RESOLVED, that, upon receipt of the deed of sale under the terms of decree of sale in the offer of John W. McKinnon referred to, the President or Vice-President and the Secretary of the Metropolitan Steamship Company be and

they are hereby authorized and directed in its behalf and under its corporate seal, to execute and deliver, signed by the President or Vice-President and the seal to be attested by the Secretary, a mortgage or deed of trust to the American Trust Company, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, as Trustee, in the form this day submitted to the stockholders and now submitted to this Board, to secure the payment of a series of bonds of this Company, for the aggregate principal sum of $3,000,000., said bonds to be of the face value of $1,000 each, bearing date November 15, 1909, payable the 15th day of November, 1939, in gold coin of the United States of America of or equal to the present standard of weight and fineness, bearing interest payable in like gold coin, from the 15th day of November, 1909, at the rate of five per cent. per annum, payable semi-annually on the first day of January and the first day of July in each year, but the last instalment shall become due and payable on the 15th day of November, 1939, the said bonds and mortgage to be in the form set forth in said printed form of mortgage submitted to this meeting, and to contain the covenants, provisions, agreements and restrictions therein contained.

Be It Further Resolved, That the President or a Vice-President of this Company, in the name of this Company and in its behalf and under its corporate seal, attested by its Secretary, execute the said series of bonds to be secured by the said mortgage in the form aforesaid, when and as soon as the said bonds shall be engraved and prepared, the coupons to be attached to said bonds to be authenticated by the engraved fac-simile signature of a Treasurer

of the Company, and deliver the said bonds, so executed, to the American Trust Company of Boston, by it to be certified and delivered in accordance with the terms of the said offer of said John W. McKinnon, and the acceptance of the same, and that the acts of the President or a Vice-President and the Secretary in signing, sealing and attesting said series of bonds and each of them, and the affixing of said engraved signature of a Treasurer, be and each of said acts is declared to be a due corporate act performed by due corporate authority.

Upon motion duly made and seconded, it was unanimously

RESOLVED, That until the said permanent bonds can be engraved, temporary bonds as provided in said mortgage shall be executed and delivered in their place.

FURTHER RESOLVED, That this Company make, issue and deliver to the said John W. McKinnon or on his order, pursuant to his offer accepted by this Company, $500,000. par value of Gold Notes, bearing date November 15th, 1909, due and payable November 15th, 1911, bearing interest at the rate of six per cent. per annum, payable semi-annually, in the form of the notes submitted to this meeting, and that the same be executed by the President and Treasurer, and when so executed and delivered shall be considered the corporate act of this Company, performed by due corporate authority.

There being no further business before the meeting, it was duly adjourned.

CAMPBELL CARRINGTON,
*Secretary.*

*Exhibit D. 22*—Minutes Nov. 19, 1909.

November 18, 1909.

METROPOLITAN STEAMSHIP COMPANY,

15 Exchange Place
Jersey City, N. J.

Gentlemen:—

On May 1, 1909, the undersigned and others were constituted and appointed Reorganization Managers of Metropolitan Steamship Company, a corporation organized under the laws of the State of Maine, which was then in the hands of receivers appointed by the Circuit Court of the United States, District of Maine, in a creditors' suit, wherein Berwind-White Coal Mining Company was plaintiff and said Metropolitan Steamship Company was defendant.

Subsequent to the appointment of said receivers foreclosure suit was commenced by American Trust Company, *a* of Boston, Mass., Trustee under the mortgage of said Metropolitan Steamship Company, and thereafter the said foreclosure suit was consolidated with the creditors' suit above referred to.

An opportunity was given to all of the bondholders and all of the general creditors of said Metropolitan Steamship Company to participate in the benefits of the Reorganization, and the Plan of Reorganization received practically the unanimous consent of the bondholders and general creditors.

The Plan of Reorganization, generally speaking, provided for the surrender by assenting bondholders and general creditors of the securities of and claims against the insolvent company, the acceptance of the securities of the reorganized company in exchange therefor, and the subscription of an amount in cash sufficient

*Exhibit D. 22*—Minutes Nov. 19, 1909.

to carry the Plan of Reorganization into effect.

On October 8th, 1909, under a decree of foreclosure and sale entered in the consolidated cause above referred to, a copy of which decree is annexed hereto and made a part hereof, the properties described therein were sold at public auction, subject to liens, as stated in said decree, and were bid in by the undersigned, pursuant to said Plan of Reorganization, upon the terms and conditions and subject to the reservations and obligations mentioned in said decree, for the sum of $2,500,000.

The sale of said properties to the undersigned was duly confirmed by said Court on November 1, 1909, and the Special Masters who made such sale are now prepared, under the instructions of said Court, to deliver to the undersigned or to his assigns a deed of said properties, which has been approved as to form by said Court.

The undersigned, for the consideration hereinafter mentioned, offer to assign or to cause said bid to be assigned to your Company, together with all his right, title and interest in and to the sum of $20,000. paid by him to the Trustee under the mortgage foreclosed by said decree on the day of said sale, and to cause a deed of the properties purchased under said decree to be made and delivered to your Company, and he forthwith tenders to your Company an assignment of said bid, executed in due form of law.

He also offers and agrees to pay or to cause to be paid, prior to the delivery to your Company of said deed, the balance of said bid over and above the said sum of $20,000. above referred to, and he also agrees to pay or to cause

to be paid, when due and payable, all sums which the Circuit Court of the United States, District of Maine, has or may hereafter direct to be paid by the undersigned, as purchaser, or his assigns, and any liens and charges upon the properties sold, and subject to which said properties were sold, as provided in said decree, and to satisfy of record or to cause to be satisfied of record any such liens or charges upon said properties which may have been allowed by said Court prior to the date of this offer by judgment, decree or otherwise, or which may hereafter be similarly allowed by said Court.

The intention of this offer is, that the undersigned shall pay or cause to be paid all sums and do or cause to be done all acts that may be necessary to transfer to your Company the properties purchased at said foreclosure sale, and that he shall relieve your Company from any and all payments due or to become due in connection with the acquisition of such properties, free and clear of all liens.

It is understood and agreed, however, that your Company shall pay or cause to be paid to the undersigned, any consideration which it may receive for the sale of the lease of the India Wharf in Boston, when and as soon as the sale of said wharf is effected and the said wharf is released from the lien of the mortgage herein referred to.

In consideration of the assignment of said bid, and in consideration of the agreements hereinbefore mentioned, your Company shall issue and deliver to the undersigned or to his order:

(a) $3,000,000. par value of First Mortgage Five Per Cent. Thirty Year Sinking Fund Bonds,

*Exhibit D. 22*—Minutes Nov. 19, 1909.

in denominations of $1000. each, dated the 15th day of November, 1909, due and payable the 15th day of November, 1939, and bearing interest at the rate of five per cent. per annum, payable semi-annually. Until such bonds are engraved and prepared, temporary bonds, as provided in the mortgage securing such bonds, may be issued and delivered in the place of the permanent bonds; said bonds and mortgage to be in the form submitted with this offer, and to be executed and issued and delivered upon the delivery of the deed transferring the properties hereinbefore referred to;

(b) $500,000. par value of gold notes, dated November 15th, 1909, due and payable November 15th, 1911, and bearing interest at the rate of six per cent. per annum, payable semi-annually; the said notes to be issued in such denominations as the undersigned may by order direct, and no mortgage other than the mortgage hereinbefore referred to is to be created while such notes remain outstanding and unpaid; and

(c) $2,999,000. par value of the stock of your Company, full paid and non-assessable, divided into shares of the par value of $100. each.

Yours very truly,

(Sgd) J. W. McKINNON.

November 19, 1909.

To

JOHN W. McKINNON, ESQ.,

Dear Sir:—

Referring to your offer to this corporation, a copy of which is hereto annexed, the Metropolitan Steamship Company, pursuant to due

*Exhibit D. 22*—Minutes Nov. 19, 1909.

corporate authority, hereby accepts your proposition, and agrees to carry out the requirements on its part as contained in such offer.

METROPOLITAN STEAMSHIP COMPANY,

By THOMAS ACHENBACH,
*President.*

(SEAL)

Attest:

CAMPBELL CARRINGTON,
*Secretary and Treasurer.*

METROPOLITAN STEAMSHIP COMPANY

Resolutions Passed by Incorporators, at Meeting Held November 19, 1909.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that the said offer of the said John W. McKinnon be accepted by this Company, and that such acceptance in writing be communicated to the said John W. McKinnon, and that the capital stock of this Company, full paid and non-assessable, be issued in accordance with his order, the certificate for the said stock to be executed by the proper officers of this Company and delivered in accordance with this resolution.

The Secretary presented to this meeting a printed form of mortgage containing a printed form of bond.

The following resolution was seconded and unanimously adopted and voted:

*Exhibit D. 22*—Minutes Nov. 19, 1909.

WHEREAS, at this meeting of the incorporators an offer was made to the Company, calling for the delivery of bonds of this Company secured by mortgage and notes and stock; and

WHEREAS, the said offer has been accepted by this Company, and this Company is obligated to issue the said bonds, secured by mortgage and notes in accordance therewith;

NOW, THEREFORE, BE IT RESOLVED: That this Company execute and deliver, under the corporate seal of this Company and the signature of the President or Vice-President and Secretary, a mortgage or deed of trust to the American Trust Company, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, as Trustee, upon the real estate, vessels, steamships and other property as referred to in the mortgage or deed of trust submitted to this meeting, both now owned or hereafter acquired, subject, however, to the provisions, conditions and restrictions in said mortgage or deed of trust contained, said mortgage or deed of trust to be in the form submitted to this meeting, to secure an issue of bonds not exceeding in the aggregate the principal sum of $3,000,000. bearing date November 15, 1909, the principal thereof to be payable in gold coin of the United States of America of or equal to the present standard of weight and fineness, at the office of the American Trust Company, in the City of Boston, Commonwealth of Massachusetts, or its successor as Trustee under the mortgage or deed of trust in said bonds mentioned, on the 15th day of November, 1939, with interest thereon at the rate of 5% per annum, payable semi-annually in like gold

coin, at the office of said American Trust Company, or its successor as aforesaid, on the first day of January, and the first day of July in each year, but the last instalment shall become due and payable on the fifteenth day of November, 1939, both principal and interest to be payable without deduction for any tax which the Company may be required to pay thereon or to retain therefrom under any present or future law or ordinance of the United States of America, or of any State, county, municipality or other lawful tax authority therein, such bonds to be coupon bonds, each for the principal of $1000., and all subject to the right of registration as to principal thereof, and shall contain the terms and provisions provided in the form of bond submitted to this meeting.

RESOLVED FURTHER That as and when prepared, said bonds be executed, issued and delivered in accordance with the terms of the offer of John W. McKinnon heretofore accepted by this Company, and that until the permanent bonds may be engraved, a temporary bond or bonds in accordance with the terms of the mortgage be executed, issued and delivered in their place.

FURTHER RESOLVED That the printed form of mortgage and the bond therein contained now submitted to this meeting be and the same hereby are approved as complying in all respects with the requirements of the foregoing resolutions.

FURTHER RESOLVED, That the execution of the mortgage by the President or a Vice-President and the affixing of the seal and attestation of the same by the Secretary, and the execution of the bond by the President or a Vice-

*Exhibit D. 22*—Minutes Nov. 19, 1909.

President and the affixing of the seal and attestation of the same by the Secretary, and the affixing of the engraved signature of a Treasurer to the coupons, as provided in the bond and mortgage, in the form submitted to this meeting, shall be considered as the due corporate act of this Company, performed by due corporate authority.

FURTHER RESOLVED, That said mortgage be executed and delivered to the Trustee, and the said bonds and coupons be authenticated and issued as soon as the deed of the Special Master has been received by this Company, and the said bonds and coupons be delivered to John W. McKinnon, or on his order, in accordance with the terms of his accepted offer.

FURTHER RESOLVED, that this Company make, issue and deliver to the said John W. McKinnon or on his order, pursuant to his offer accepted by this Company, $500,000. par value of Gold Notes, bearing date November 15th, 1909, due and payable November 15th, 1911, bearing interest at the rate of six per cent. per annum, payable semi-annually, in the form of the notes submitted to this meeting, and that the same be executed by the President and Treasurer, and when so executed and delivered shall be considered the corporate act of this Company, performed by due corporate authority.

The Board of Directors are directed to hold a meeting after the adjournment of this meeting, at the principal office of the Company in Jersey City, for the election of officers, adoption of a seal, the approval of the said offer and acceptance, the authorization of the bonds, mortgage

*Exhibit D. 22*—Minutes Nov. 29, 1909.

and notes, and any other business which may come before the meeting.

(Then follows copy of first mortgage and ten year notes).

*Meeting November 29, 1909.*

MINUTES of a meeting of the Board of Directors of METROPOLITAN STEAMSHIP COMPANY, held at No. 25 Broad Street, Borough of Manhattan, City of New York, pursuant to waiver of notice signed by all the directors, on Monday, November 29th, 1909, at 6.05 P. M.

Present:

Thomas Achenbach, President
Jesse Meyers
Ernest J. Ellenwood

being all of the directors of the Company.

On motion duly made, seconded and carried, Mr. Jesse Myers was appointed secretary of the meeting.

On motion duly made, seconded and carried the following resolutions were unanimously adopted:

RESOLVED, that it is advisable to amend the Certificate of Incorporation of this Company by decreasing the capital stock of this Company by 15,000 shares, so that the capital stock shall be 15,000 shares of the par value of $100. each, in the place of the 30,000 shares of the par value of $100. each, the present capital stock. That for the purpose of effecting such decrease, this Company execute and issue $1,500,000. par value of notes in the following form:

(Then follows form of ten-year notes).

*Exhibit D. 22*—Minutes Nov. 29, 1909.

That an offer be made to the stockholders of record to surrender their shares of stock ratably to the extent of 15,000 shares in all, each shareholder having the opportunity of surrendering 50% of his holdings of stock of this company, each shareholder so surrendering his shares of stock to accept therefor notes of this company in the form aforesaid, receiving notes of a par value equal to the par value of the shares of stock so surrendered; also that such notice be given to shareholders of record as the stockholders at their meeting held pursuant to these resolutions shall determine, and if within such time any shareholder shall neglect or refuse to make such surrender and accept such notes in place of such shares, then the Board of Directors shall cause the privilege of such shareholder to be transferred to other shareholders who may desire to surrender shares of stock on such terms; the said shares of stock when so surrendered to be cancelled and retired.

FURTHER RESOLVED that a special meeting of the stockholders be called to be held on the 2nd day of December, 1909, at 2 P. M., at the office of the Company, No. 15 Exchange Place, Jersey City, N. J., for the purpose of taking action thereon, and that the president be directed to sign such notice and cause a copy thereof to be sent to each stockholder of record.

On motion duly made, seconded and carried, the following resolutions were unanimously adopted:

RESOLVED that the Corporation Trust Company be and hereby is appointed the agent of this company, in charge of the registered office, and upon whom process against this company may be served in accordance with the laws of

*Exhibit D. 22*—Minutes Nov. 29, 1909.

New Jersey, and transfer agent of the shares of stock of this company.

FURTHER RESOLVED that the Trust company may apply to and act upon the instructions of Messrs. Underwood, Van Vorst & Hoyt, the counsel of this company, in respect to any legal questions arising in connection with said agency.

FURTHER RESOLVED that the Secretary be and is hereby authorized to sign, and seal with the Company's seal, a certificate of authorization to said Trust Company in the form submitted at this meeting.

There being no further business before the meeting, the same was on motion duly made, seconded and carried, duly adjourned.

JESSE MYERS,
*Secretary of the meeting.*

*Meeting December 27, 1909.*

A special meeting of the Board of Directors of Metropolitan Steamship Company was held pursuant to waiver of notice, on the 27th day of December, 1909, at 10.30 o'clock in the forenoon of said day, at No. 25 Broad Street, Borough of Manhattan, City of New York.

The following directors were present:

Thomas Achenbach, President.

Jesse Myers

The Secretary presented and read to the meeting a letter received from the Reorganization Managers of Metropolitan Steamship Company—of the State of Maine—outlining an agreement entered into between the Reorganization Managers of said company and Atlantic, Gulf & West Indies Lines, and requesting that the Directors of Metropolitan Steamship Com-

pany—of New Jersey—should authorize the proper officers of the Company to enter into an agreement with said Atlantic, Gulf & West Indies Lines to pay prior to maturity Ten-year notes of said Metropolitan Steamship Company held by said Atlantic, Gulf & West Indies Lines, as follows, to wit: $30,000. par value of said notes two years after date thereof and $30,000. par value three years after the date thereof.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

Resolved that the Treasurer of this company be, and he is hereby authorized and directed to enter into such agreement as he may deem proper in the name of this company and in its behalf with said Atlantic, Gulf & West Indies Lines, for payment by this Company of $30,000. par value of Ten-Year Notes of this Company held by said Atlantic, Gulf & West Indies Lines two years after the date thereof, and $30,000. par value of said Ten-Year Notes three years after the date thereof.

FURTHER RESOLVED, That the letter of the said Reorganization Managers presented and read by the Secretary of the Company be, and it hereby is ordered to be annexed to the minutes of this meeting.

The Secretary then stated to the meeting that the decretal order directing the receivers of the Metropolitan Steamship Company—the old Company—to turn over and surrender the property in their hands to this Company had been entered in the Circuit Court of the United States for the District of Maine, on December 13th, 1909, and that ancillary decretal orders had been entered in the Circuit Court of the United States for the District of Massachusetts and the Circuit

*Exhibit D. 22*—Minutes Nov. 29, 1909.

Court of the United States for the Southern District of New York on December 14th and 15th respectively, and that said decretal order provides for the purchase by this Company of the unexpired vessel and cargo insurance held by said receivers at and for the sum of $72,-
10 116.62, and the Secretary further stated that negotiations were being conducted in behalf of this Company for the purchase by the Company of the liquid assets in the hands of the receivers, including said insurance policies, as said liquid assets appear on the balance sheet of said receivers dated October 31, 1909, at and for the sum of $275,000. less the cash in the hands of the receivers, said purchase to be made subject to the obligations of the receivers, and that a
20 proposition had been made to said receivers for such assets, subject to the approval of the directors of this company, of the following form and tenor, to wit:

"METROPOLITAN STEAMSHIP CO.
OPERATING BETWEEN
NEW YORK AND BOSTON
Pier 45, North River,
Please Refer to File
30 New York, December 24, 1909.

Messrs. Calvin Austin,
William T. Cobb,
Abel I. Culver,
Receivers Metropolitan Steamship Company (of Maine)

Gentlemen:

Whereas the undersigned company is the owner of all the property late of the Metropolitan Steamship Company (of Maine) de-
40 scribed in the deed of John F. A. Merrill

*Exhibit D. 22*--Minutes Nov. 29, 1909.

and Albert S. Woodman, special masters, and the Metropolitan Steamship Company (of Maine) dated November 22, 1909, to it; and

Whereas the undersigned company did not acquire the cash and cash assets in your hands as receivers on October 31, 1909, as shown on your statement filed in the Circuit Court of the United States for the District of Maine on November 22, 1909, and did not acquire any and all other items of cash, or accounts, or items receivable, or which may be receivable, not included in your said statement, arising out of the receivership or the operation of the property by you as receivers prior to October 31, 1909, or which may be, or may be found to be, due and owing to the Metropolitan Steamship Company (of Maine) on account of any matters or things arising or accruing prior to said receivership; and

Whereas this company deems it advantageous in the operation of its business to take over the freight line accounts, traffic balances and insurance claims, and also desires to acquire all the above described property not heretofore set forth as acquired by it, and all the property owned by you as such receivers excepting actual cash in your hands as receivers;

Now, therefore, the undersigned company offers to take over all the assets shown by the statement of the receivers as of October 31, 1909, filed in said Court on November 22, 1909, which includes all liabilities known to you covering such period except claims covered by insurance, and except actual

cash on hand or hereafter collected by you prior to the delivery of said assets, together with an assignment of any and all other items of cash or accounts, or items receivable, or which may be receivable, not included in your said receivers' statement, arising out of the receivership, or the operation of the property by you as receivers, and an assignment of all other property owned by you as such receivers except actual cash on hand, or which may be, or may be found to be, due and owing to the Metropolitan Steamship Company (of Maine) on account of any matters or things arising or accruing prior to said receivership.

Such assignment is intended to cover any and all assets of every name and description belonging to the Metropolitan Steamship Company (of Maine), or held by you as receivers, excepting as aforesaid, the actual cash now in your hands or hereafter collected by you prior to the delivery of said assets.

And for such assets and such assignment the undersigned company will pay you such sum as will together with the cash now in your hands or hereafter collected by you prior to the delivery of said assets, amount to $275,000.00.

Such assets and assignment are to be taken over by the undersigned company subject to, and this company will assume and agree to pay, all debts and liabilities incurred by you as receivers arising out of the operation of the business by you as receivers (provided such claims are presented within a reasonable time to be fixed by the court); excepting however the six months

*Exhibit D. 22*—Minutes Nov. 29, 1909.

supply claims, so-called, and excepting the Receivers' Certificates heretofore issued by you under orders of said court, and excepting the deficiency claim under the mortgage. As practically all of the six-months' supply claims, so-called, and also the deficiency claim under the mortgage, are subject to the control of the undersigned company; and as it is uncertain when dividends will be declared thereto, or the same paid, and as this company does not desire to be out of its money any longer than is necessary, this company will, in lieu of cash, deposit with you its bond, with the Assets Realization Company as surety, providing for the payment by this company to you of such amounts as may be from time to time ordered by the court and required for actual distribution up to the aggregate sum of $275,000. less the cash now in your hands or hereafter collected by you prior to the delivery of said assets; and as further security for said bond this company will assign to the receivers about 90 per cent of the six months' supply claims, so-called, heretofore approved and allowed by this court.

As the form of the above assets has changed since the date of your statement of October 31, 1909, and is constantly changing, this company agrees to accept the result of your operations from that date to the date of the transfer of the assets.

Very truly yours,

METROPOLITAN STEAMSHIP COMPANY,
(Of New Jersey)

By THOMAS ACHENBACH,
*President.*"

*Exhibit D. 22*—Minutes Nov. 29, 1909.

The Secretary then stated that the Company could arrange a loan to provide for the payment of such assets, said loan to be evidenced by the Company's note or notes and secured by an assignment of the assets required from the receivers.

On motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That the following offer, which was made by the President of this Company, to the receivers of Metropolitan Steamship Company (of Maine), dated December 24th, 1909, be, and the same is hereby fully ratified and adopted, and the Treasurer of this Company be, and he is hereby authorized and directed to take such steps and do all such acts as he may deem necessary and proper to consummate the purchase of said assets from the receivers on the basis set forth in said offer:

"METROPOLITAN STEAMSHIP CO.
OPERATING BETWEEN
NEW YORK AND BOSTON
Pier 45, North River
Please Refer to File.
New York, December 24, 1909.

Messrs. Calvin Austin,
William T. Cobb,
Abel I. Culver,
Receivers Metropolitan Steamship
Company (of Maine)

Gentlemen:

Whereas the undersigned company is the owner of all the property late of the Metropolitan Steamship Company (of Maine) described in the deed of John F. A. Merrill

*Exhibit D. 22*—Minutes Nov. 29, 1909.

and Albert S. Woodman, Special Masters, and the Metropolitan Steamship Company (of Maine) dated November 22, 1909, to-wit; and

Whereas the undersigned company did not acquire the cash and cash assets in your hands as Receivers on October 31, 1909, as shown on your statement filed in the Circuit Court of the United States for the District of Maine on November 22, 1909, and did not acquire any and all other items of cash, or accounts, or items receivable, or which may be receivable, not included in your said statement, arising out of the receivership or the operation of the property by you as Receivers prior to October 31, 1909, or which may be, or may be found to be, due and owing to the Metropolitan Steamship Company (of Maine) on account of any matters or things arising or accruing prior to said receivership; and

Whereas this company deems it advantageous in the operation of its business to take over the freight line accounts, traffic balances and insurance claims, and also desires to acquire all the above-described property not heretofore set forth as acquired by it, and all the property owned by you as such Receivers excepting actual cash in your hands as Receivers;

NOW THEREFORE, the undersigned company offers to take over all the assets shown by the statement of the Receivers as of October 31, 1909, filed in said Court on November 22, 1909, which includes all liabilities known to you covering such period except claims covered by insurance,

*Exhibit D. 22*—Minutes Nov. 29, 1909.

and except actual cash on hand or hereafter collected by you prior to the delivery of said assets, together with an assignment of any and all other items of cash or accounts, or items receivable, or which may be receivable, not included in your said Receivers' statement, arising out of the receivership or the operation of the property by you as Receivers, and an assignment of all other property owned by you as such Receivers except actual cash on hand, or which may be, or may be found to be, due and owing to the Metropolitan Steamship Company (of Maine) on account of any matters or things arising or accruing prior to said receivership.

Such assignment is intended to cover any and all assets of every name and description belonging to the Metropolitan Steamship Company (of Maine), or held by you as Receivers, excepting as aforesaid the actual cash now in your hands or hereafter collected by you prior to the delivery of said assets.

And for such assets and such assignment the undersigned company will pay you such sum as will together with the cash now in your hands or hereafter collected by you prior to the delivery of said assets, amount to $275,000.00.

Such assets and assignment are to be taken over by the undersigned company subject to, and this company will assume and agree to pay, all debts and liabilities incurred by you as Receivers arising out of the operation of the business by you as Receivers (provided such claims are presented within a reasonable time to be fixed

*Exhibit D. 22*—Minutes Nov. 29, 1909.

by the Court); excepting, however, the six months' supply claims, so-called, and excepting the Receivers' Certificates heretofore issued by you under orders of said court, and excepting the deficiency claim under the mortgage. As practically all of the six months' supply claims, so-called, and also the deficiency claim under the mortgage, are subject to the control of the undersigned company; and as it is uncertain when dividends will be declared thereon, or the same paid; and as this company does not desire to be out of its money any longer than is necessary, this company will, in lieu of cash, deposit with you its bond, with the Assets Realization Company as surety, providing for the payment by this company to you of such amounts as may be from time to time ordered by the court and required for actual distribution up to the aggregate sum of $275,000., less the cash now in your hands or hereafter collected by you prior to the delivery of said assets; and as further security for said bond this company will assign to the Receivers about 90 per cent of the six months' supply claims, so-called, heretofore approved and allowed by this Court.

As the form of the above assets has changed since the date of your statement of October 31, 1909, and is constantly changing, this company agrees to accept the result of your operations from that date to the date of the transfer of the assets.

Very truly yours,

METROPOLITAN STEAMSHIP COMPANY
(Of New Jersey)

By THOMAS ACHENBACH,
*President.*"

*Exhibit D. 22*—Minutes Nov. 29, 1909.

FURTHER RESOLVED, That the Treasurer of this Company be, and he is hereby authorized and directed to execute in the name of this Company and in its behalf the bond referred to in said offer, and such other documents or contracts as may be necessary to carry the transaction into effect.

FURTHER RESOLVED, That the Treasurer of this Company be, and he is hereby authorized and directed to borrow in the name of this Company and in its behalf such sums of money as this Company may be called upon to pay from time to time in the event that said offer is accepted, and that he be, and he is hereby authorized and directed to execute in the name of this Company and in its behalf notes of the Company for the amount or amounts of money so borrowed, and to secure the payment of such note or notes by the pledge of the liquid assets acquired from said receivers.

The Treasurer submitted to the meeting a letter from the American Trust Company of Boston, Trustee of the Company's existing $3,000,000. First Mortgage, notifying this Company of the necessity of providing $18,750.00, interest due on said mortgage January 1st, 1910.

Upon motion made and duly seconded, it was

RESOLVED, That the Treasurer be and is hereby empowered and directed to borrow such an amount as may be necessary to provide for the payment called for in the letter above referred to, and that he is hereby authorized to give a note or notes in payment for such an amount so borrowed.

*Exhibit D. 22*—Minutes Dec. 28, 1909.

Upon motion duly made and seconded, the meeting adjourned to Tuesday, December 28th, 1909, at 6 o'clock in the afternoon.

CAMPBELL CARRINGTON,
*Secretary.*

*Meeting December 28, 1909.*

An adjourned special meeting of the Board of Directors of METROPOLITAN STEAMSHIP COMPANY was held pursuant to adjournment on the 28th day of December, 1909, at six o'clock in the afternoon of that day, at No. 25 Broad Street, Borough of Manhattan, City of New York.

The following directors were present:
Thomas Achenbach, President,
Jesse Myers,
constituting a majority of the Board.

The President called the meeting to order.

The Secretary stated to the meeting that the offer made to the receivers of the Metropolitan Steamship Company—the old company—for the purchase of the liquid assets in the hands of said receivers, including the vessel and cargo insurance policies, as said liquid assets appear on the balance sheet of said receivers, dated October 31, 1909, at and for the sum of $275,000., less the cash in the hands of the receivers, said purchase to be made subject to the obligations of the receivers, which said offer was authorized to be made by the directors of this company at their meeting held on December 27, 1909, had been rejected by the said receivers.

On motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, that the following offer be made by this Company to the receivers of Met-

ropolitan Steamship Company (of Maine), and that the President of this Company be, and he is hereby authorized and directed to sign such offer in behalf of this Company, and that the Treasurer of this Company be, and he is hereby authorized and directed to take all such steps and do all such acts as he may deem necessary and proper to consummate the purchase of said assets from the receivers on the basis set forth in said offer:—

Metropolitan Steamship Co.

Operating between New York and Boston.
Pier 45, North River. Please refer to file.

New York, December 28, 1909.

Messrs. Calvin Austin,
William T. Cobb
Abel I. Culver
Receivers METROPOLITAN STEAMSHIP COMPANY (of Maine).

Gentlemen:—

Whereas the undersigned company is the owner of all the property late of the Metropolitan Steamship Company (of Maine) described in the deed of John F. A. Merrill and Albert S. Woodman, Special Masters, and the Metropolitan Steamship Company (of Maine) dated November 22, 1909, to wit; and

Whereas the undersigned company did not acquire the cash and cash assets in your hands as Receivers on October 31, 1909, as shown on your statement filed in the Circuit Court of the United States for the District of Maine on November 22, 1909, and did not acquire any and all other items of cash, or accounts, or items receivable, or which may be receivable, not included in

*Exhibit D. 22*—Minutes Dec. 28, 1909.

your said statement, arising out of the receivership or the operation of the property by you as Receivers prior to October 31, 1909, or which may be, or may be found to be, due and owing to the Metropolitan Steamship Company (of Maine) on account of any matters or things arising or accruing prior to said receivership; and

Whereas this company deems it advantageous in the operation of its business to take over the freight line accounts, traffic balances and insurance claims, and also desires to acquire all the above-described property not heretofore set forth as acquired by it, and all the property owned by you as such Receivers excepting actual cash in your hands as Receivers;

NOW, THEREFORE, the undersigned company offers to take over all the assets shown by the statement of the Receivers as of October 31, 1909, filed in said Court on November 22, 1909, except actual cash on hand at the time of the delivery of said assets, together with an assignment of any and all other items of cash or accounts, or items receivable, or which may be receivable, not included in your said Receivers' statement, arising out of the receivership or the operation of the property by you as Receivers, and an assignment of all other property owned by you as such Receivers except actual cash on hand, or which may be, or may be found to be, due and owing to the Metropolitan Steamship Company (of Maine) on account of any matters or things arising or accruing prior to said receivership.

*Exhibit D. 22*—Minutes Dec. 28, 1909.

Such assignment is intended to cover any and all assets of every name and description belonging to the Metropolitan Steamship Company (of Maine), or held by you as Receivers, excepting as aforesaid the actual cash in your hands at the time of the delivery of said assets.

And for such assets and such assignment the undersigned company will pay you such sum as will, together with the cash in your hands at the time of the delivery of said assets, amount to $275,000.00.

Such assets and assignment are to be taken over by the undersigned company subject to, and this company will assume and agree to pay, all debts and liabilities incurred by you as Receivers arising out of the operation of the business by you as Receivers; excepting, however, the six months' supply claims, so-called, and excepting the Receivers' certificates heretofore issued by you under orders of said court, and excepting the deficiency claim under the mortgage. As practically all of the six months' supply claims, so-called, and also the deficiency claim under the mortgage, are subject to the control of the undersigned company; and as it is uncertain when dividends will be declared thereon, or the same paid; and as this company does not desire to be out of its money any longer than is necessary, this company will, in lieu of cash, deposit with you its bond, with the Assets Realization Company as surety, providing for the payment by this company to you of such amounts as may be from time to time required for distribu-

*Exhibit D. 22*—Minutes Dec. 28, 1909.

tion under any final order or decree of the court up to the aggregate sum of $275,000., less the cash in your hands at the time of the delivery of said assets; and as further security for said bond this company will assign to the Receivers about 90 per cent. of the six months' supply claims, so-called, heretofore approved and allowed by this court.

As the form of the above assets has changed since the date of your statement of October 31, 1909, and is constantly changing, this company agrees to accept the result of your operations from that date to the date of the transfer of the assets.

Very truly yours,

METROPOLITAN STEAMSHIP COMPANY
(of New Jersey)

By

THOMAS ACHENBACH,
*President.*

FURTHER RESOLVED THAT the Treasurer of this Company be, and he is hereby authorized and directed to execute in the name of this Company and in its behalf the bond referred to in said offer, and such other documents or contracts as may be necessary to carry the transaction into effect.

FURTHER RESOLVED That the Treasurer of this Company be, and he is hereby authorized and directed to borrow in the name of this Company and in its behalf such sums of money as this Company may be called upon to pay

*Exhibit D. 22*—Minutes Jan. 12, 1910.

from time to time in the event that said offer is accepted, and that he be, and he is hereby authorized and directed to execute in the name of this Company and in its behalf notes of the Company for the amount or amounts of money so borrowed, and to secure the payment of such note or notes by the pledge of the liquid assets acquired from said receivers.

No further business being presented to the meeting, on motion duly made and seconded, the same adjourned.

CAMPBELL CARRINGTON,
*Secretary.*

*Meeting January 12, 1910.*

A Special Meeting of the Board of Directors of METROPOLITAN STEAMSHIP COMPANY was held at No. 25 Broad Street, Borough of Manhattan, City of New York, on the 12th day of January, 1910, at 4 o'clock in the afternoon.

There were present,
John W. McKinnon, President
Jesse Myers
Thomas Achenbach
being all the directors of the Company.

The President called the meeting to order, and the Secretary of the Company acted as Secretary of the meeting.

On motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, that John W. McKinnon, as President, and Campbell Carrington as Secretary of this Company, be, and they are hereby authorized, empowered and directed to execute in behalf of and in the name of this Company

a bond in the sum of Two hundred and seventy-five thousand dollars ($275,000), said bond to be in the form this day submitted by Mr. C. A. Hight, attorney for the receivers of Metropolitan Steamship Company (of Maine), or such other form as the said officers may deem proper.

On motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, that John W. McKinnon as President of this Company be, and is hereby authorized and empowered to execute in the name of and in behalf of this Company all writings or other documents which he may deem necessary and proper in connection with the purchase by this Company from the receivers of the Metropolitan Steamship Company (a Maine Corporation) of what are known as the liquid assets of said corporation.

On motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, that the action of the Treasurer in giving a note for $18,750, for the purpose of securing the amount necessary to pay interest on the bonds of this company, which interest matured on January 1st, be and the same is hereby fully ratified and adopted; and further, that the payment of said interest maturing January 1st, amounting to $18,750., by the Treasurer be and the same is hereby fully ratified and adopted.

On motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, that the Treasurer be and he is hereby authorized and empowered to execute in the name of the Company such bonds as he may deem proper in connection with any alleged loss or damage claims covering the ships and property of this Company, or under the care of this Company.

*Exhibit D. 22*—Minutes Jan. 28, 1910.

IT IS FURTHER RESOLVED, that the action of the Treasurer be and the same is hereby ratified and adopted, covering the execution of any bonds which he may have heretofore signed in connection with any alleged loss or damage claims against this Company.

There being no further business before the meeting, the same, on motion *duly and seconded,* adjourned.

CAMPBELL CARRINGTON,
*Secretary.*

*Meeting January 28, 1910.*

A Special Meeting of the Board of Directors of METROPOLITAN STEAMSHIP COMPANY was held at No. 25 Broad Street, Borough of Manhattan, City of New York, on the 28th day of January, 1910, at 12 o'clock noon, in pursuance of waiver of notice signed by all of the Directors.

There were present:

John W. McKinnon, President
George E. Shaw
Edward B. Wire

being all the directors of the Company.

The President called the meeting to order.

Upon motion made and duly seconded, it was

RESOLVED that the giving of a demand note of $10,000. dated January 15th, 1910, and another demand note of $5,000 dated January 21st, 1910, in the name of this Company, said notes being executed by the President and Treasurer and being for money loaned to this company, be and the same is hereby fully ratified and adopted.

*Exhibit D. 22*—Minutes Feb. 9, 1910.

Upon motion made and duly seconded, it was RESOLVED that the President or Vice-President together with the Treasurer are hereby authorized and empowered to borrow in the name and on behalf of the company such sums of money as they may deem wise and proper, and are hereby fully authorized and empowered to execute in the name and on behalf of the company such notes or other obligations as they may deem proper covering any amounts so borrowed, and such officers are further authorized and empowered to hypothecate any of the securities of this company in connection with any loans so made.

There being no further business before the meeting, on motion made and duly seconded the same adjourned.

CAMPBELL CARRINGTON,
*Secretary.*

*Meeting February 9, 1910.*

A Special Meeting of the Board of Directors of METROPOLITAN STEAMSHIP COMPANY was held at No. 25 Broad Street, Borough of Manhattan, City of New York, on the 9th day of February, 1910, at 12 o'clock noon, in pursuance of waiver of notice signed by all the Directors.

Present:

Messrs. John W. McKinnon, President
E. B. Wire

Absent:

Mr. George E. Shaw.

A proposition was submitted by the Assets Realization Company and ordered to be filed among the records of the company. After con-

*Exhibit D. 22*—Minutes Feb. 9, 1910.

sidering same, the following motion was made, seconded and unanimously carried:

Whereas, certain notes of Geo. A. Fernald & Co. in the amount of $110,000., having as collateral $104,000. par value bonds of the Metropolitan Steamship Company (of Maine) were given to said Metropolitan Steamship Company (of Maine), and said notes and the collateral attached thereto were delivered, together with $75,000. par value New York & Porto Rico Steamship Company bonds, to Messrs. Hornblower & Weeks as collateral for certain claims and accounts owing to said Hornblower & Weeks by the said Metropolitan Steamship Company (of Maine), and

Whereas, this company, through the purchase of the assets of the said Metropolitan Steamship Company (of Maine) from the receivers thereof, acquired all and any equity which there might be in said Hornblower & Weeks account and claim and the said notes of Geo. A. Fernald & Co. and the collateral attached thereto, and

Whereas, an offer has been made by the Assets Realization Company to this company of $2000.00 for such equity; and

Whereas, this is deemed a fair price therefor, and it is considered wise to accept the same.

Now, therefore, be it resolved that this company hereby accepts such offer of $2000.00 for the sale of its said equity in the said bonds, notes and collateral, and that the proper officers of this company be and they are hereby authorized, empowered and directed to execute such assignments, conveyances and other documents, and to do such acts and things as may be necessary in order to perfect the sale and conveyance of said equity, upon the said Assets Realization Company crediting on the notes of

this company held by it the amount of $2000.00; that such assignment shall include the right of the said Assets Realization Company or its nominee to sue in the name of this company and to prosecute, settle or compromise any such suits covering the claim referred to in this resolution.

A further proposition was submitted by the Assets Realization Company and ordered to be filed among the records of the Company. After considering the same, the following motion was made, seconded and unanimously carried.

Whereas, the Clyde Steamship Company has presented a certain claim amounting to approximately $21,000. said claim arising by reason of the alleged failure of the receivers of the Metropolitan Steamship Company (of Maine) to maintain certain repairs on the dock in New York City, sub-leased by the Clyde Steamship Company to the receivers of the Metropolitan Steamship Company (of Maine), and

Whereas, the Assets Realization Company has offered to assume any obligation which may be established by reason of the above claim, in consideration of the assignment to it of any and all right, title, interest and claim which this Company may have as the purchaser of the assets of the Receivers of the Metropolitan Steamship Company (of Maine) in and to a claim or right of action growing out of the use by the Mallory Steamship Company of $100,000. of the funds of the Metropolitan Steamship Company (of Maine) in connection with the sale of two vessels of the Joy Line,

Now therefore be it resolved that this company hereby accepts said proposition of the

*Exhibit D. 22*—Minutes Feb. 9, 1910.

Assets Realization Company, and hereby authorizes, empowers and directs the proper officers of this company to execute such assignments, conveyances and other documents, and to do such acts and things as may be necessary in order to perfect the sale and conveyance of said claim to the said Assets Realization Company; that such assignment shall include the right of the said Assets Realization Company or its nominee to sue in the name of this Company and to prosecute, settle or compromise any such suits covering the claim referred to in this resolution.

A further proposition was submitted by the Assets Realization Company and ordered to be filed among the records of the company. After considering the same, the following motion was made, seconded and unanimously carried.

Whereas, this company has acquired, among the liquid assets purchased from the receivers of the Metropolitan Steamship Company (of Maine), the old company, a certain claim against the Mercantile National Bank, being in the amount approximately of $8,194.72; and

Whereas this company has received from the Assets Realization Company an offer of par for such claim, and

Whereas, it is deemed wise and proper to accept such offer:

Now therefore be it resolved that this company does hereby accept said offer to sell said claim of the Mercantile National Bank, and that the proper officers of this company be and they are hereby authorized, empowered and directed to execute such assignments, conveyances and other documents, and to do such acts and things as may be necessary in order to perfect

*Exhibit D. 22*—Minutes Feb. 9, 1910.

the sale of said claim of the Mercantile National Bank to the said Assets Realization Company upon it crediting on the notes of this company held by it the amount of such Mercantile National Bank claim; that such assignment shall include the right of the said Assets Realization Company or its nominee to sue in the name of this company and to prosecute, settle or compromise any such suits covering the claim referred to in this resolution.

Upon motion made and duly seconded, the following resolution was unanimously carried:

Resolved that the action of the president and treasurer in giving two notes to the Atlantic, Gulf & West Indies Steamship Lines of $30,000. each, both dated February 5th, 1910, and one of same payable on the 15th day of December, 1911, and the other on the 24th day of September, 1912, and both of said notes to run without interest, be and the same is hereby ratified, adopted and confirmed conditioned upon the delivery to this company, for cancellation, of $72,-708.22 of the outstanding ten year non-interest bearing notes of this company, and such adoption, ratification and confirmation to be further conditioned and dependent upon and effective only upon the delivery of a certified copy of this resolution to the Atlantic, Gulf and West Indies Steamship Lines when Mr. Campbell Carrington, the present Treasurer of this Company, shall deem it proper to deliver the same.

Upon motion made and duly seconded the meeting adjourned.

CAMPBELL CARRINGTON,
*Secretary.*

*Exhibit D. 22*—Minutes Feb. 18, 1910.

*Meeting, February 18, 1910.*

A special meeting of the Board of Directors of the Metropolitan Steamship Company was held at No. 25 Broad Street, Borough of Manhattan, City of New York, on the 18th day of February, 1910, at 3 o'clock in the afternoon, in pursuance of waiver of notice signed by all of the directors.

Present:

Messrs. John W. McKinnon
George E. Shaw
Edward B. Wire

The following resolution was duly made and seconded and carried unanimously:

Whereas the following proposition has been made to this company for the purchase of its freight steamers—

"New York, February 16th, 1910.

Metropolitan Steamship Company,
25 Broad Street,
New York City.

Gentlemen:

On behalf of clients we are authorized to offer $650,000., for the following steamers owned by you, to wit:

The vessel called the H. M. Whitney
" " " " H. F. Dimock
" " " " James S. Whitney
" " " " Herman Winter
" " " " James Anderson
" " " " William S. McGowan.
" " " " N. Hayden
" " " " C. H. Prior
" " " " J. W. Walker

The vessel used as a car float and called The Eastern

*Exhibit D. 22*—Minutes Feb. 18, 1910.

The vessel used as a car float and called
The Western

This offer to remain open ten days from the date thereof, payment to be made upon conveyance of an unincumbered title to these steamers within said time limit.

We reserve the right to pay said sum to you either in cash or in first mortgage bonds of your company at par flat at our option.

Very truly yours,
Wing & Russell";

and

Whereas the said freight vessels have been operated at a loss, and in the judgment of this Board their continued operation will involve a constant loss; and

Whereas, the remaining vessels of the line, to wit, the Yale and Harvard have been run profitably, and it is the purpose and intent of this company to retain the said Yale and Harvard, and maintain the passenger service carried on by said vessels between the ports of New York and Boston as heretofore; and

Whereas in the judgment of this board of directors it is desirable in the proper and judicious management and maintenance of the business of this company to sell the said vessels at said price of six hundred fifty thousand dollars ($650,000.); and

Whereas in the judgment of the directors of this company the said price of six hundred and fifty thousand dollars ($650,000.) is fair and represents the true value of said property.

Now therefore be it resolved that the said proposition for the purchase of said steamers be accepted and that the proper officers of this

*Exhibit D. 22*—Minutes Mch. 4, 1910.

corporation are authorized in the name and behalf of this company to formally accept said offer, and to take such steps as may be necessary or proper in order to secure a release by the Trustee of this company's First Mortgage on said steamers from the encumbrances and trusts of said Mortgage, and to do such other acts and things as may in their judgment be necessary or proper in order to carry into effect the intent of this resolution.

Upon motion made and seconded the meeting adjourned.

CAMPBELL CARRINGTON,
*Secretary.*

*Meeting, March 4, 1910.*

Minutes of Special Meeting of the Board of Directors of the Metropolitan Steamship Company, held at No. 25 Broad Street, Borough of Manhattan, City of New York, on the 4th day of March, 1910, at four o'clock P. M. in pursuance of waiver of notice signed by all the directors.

Present: John W. McKinnon
George E. Shaw
E. B. Wire.

Whereas a proposition has been made to this Company by Edward T. Canfield for the purchase of the Union Wharf property in Boston, Massachusetts; and

Whereas said wharf property is no longer useful for the purposes of this company; and

Whereas, the said Canfield is anxious to obtain possession and use of said wharf at once; and

*Exhibit D. 22*—Minutes Mch. 4, 1910.

Whereas, it will take some time to obtain the consent of the Trustee under the mortgage securing said first mortgage bonds, to the release of said wharf property from the lien of said mortgage, so that the title to the said property may be conveyed to the said Canfield or his assigns or nominee; and

Whereas, the said Canfield has expressed his willingness to take possession of said wharf under the following contract:

Agreement between Metropolitan Steamship Company, a corporation duly organized and existing under the laws of the State of New Jersey, party of the first part, and Edward T. Canfield, party of the second part;

Metropolitan Steamship Company hereby agrees to sell to Edward T. Canfield, and Edward T. Canfield agrees to purchase from Metropolitan Steamship Company for three hundred fifty thousand dollars ($350,000,) the following property, to wit:

A certain tract of lands and flats, with the wharves, buildings and structures thereon, known as Union Wharf property, situated in Boston in the county of Suffolk and Commonwealth of Massachusetts, bounded and described as follows:

Northwesterly on Commercial street about three hundred and sixty-four and thirty-five hundredths (364.35) feet; northeasterly on land, dock and flats now or formerly of the Lincoln Wharf Company five hundred and fifty-five and seventy-five hundredths (555.-75) feet; easterly on the harbor line four hundred and sixty-two and forty-two hundreds (462.42) feet, and southwesterly on land now or late of the proprietors of Sar-

gents Wharf, in part by a line measuring three hundred and three and seventy-five hundreths (303.75) feet, as established by an indenture recorded with Suffolk Deeds, Lib. 414, Fol. 168, and in part by two lines as established by an indenture recorded with said deeds, Lib. 545, Fol. 278, one measuring one hundred and twenty-four and fifty hundredths (124.50) feet, the other measuring two hundred and seven and fifty-five hundredths (207.55) feet, or however otherwise said premises may be bounded and described, and be all or any of said measurements more or less.

Being the premises conveyed to the Metropolitan Steamship Company, a corporation organized under the laws of the Commonwealth of Massachusetts (hereinafter called the Massachusetts Company), by deed of Joseph D. Dilworth dated February 7, 1900, duly recorded Lib. 2664, page 159, and deed of Robert Codman et al., Trustees, duly recorded Lib. 2667, page 333; and deed of Union Wharf Company dated February 15, 1900, duly recorded in Lib. 2668, page 214; and deed of Henry M. Whitney, dated May 12, 1904, duly recorded Lib. 2967, page 489; and deed of the Massachusetts Company to John Brophy dated May 16, 1905; and deed of John Brophy to the Metropolitan Steamship Company, a corporation organized under the laws of the State of Maine, dated May 16, 1905, said two last mentioned deeds being duly recorded with Suffolk Deeds. Said Union Wharf premises are conveyed with the benefits of the rights and privileges referred to in the deeds above men-

tioned, and under all licenses heretofore granted by the Board of Harbor and Land Commissioners affecting the same; a part of said Union Wharf premises being subject to a lease expiring March 1, 1919, of the J. L. Kelso Warehouse Company at an annual rental of Ten thousand dollars ($10,000,) payable monthly.

Metropolitan Steamship Company agrees to deliver immediate possession of said real estate to Edward T. Canfield or his assigns, and to do everything in its power to obtain a release of said real estate by American Trust Company, trustee of the first mortgage of the Metropolitan Steamship Company to American Trust Company, dated November 15, 1909, from the encumbrances and trusts of said mortgage, in accordance with the provisions of Section 2 of Article IX of said mortgage; and to leave said Edward T. Canfield or his assigns in the undisturbed possession and use of all said property and in the full enjoyment of the rentals due and to become due under all leases of any part of said property until said Metropolitan Steamship Company is able to convey by a good and sufficient deed of conveyance all said real estate to said Edward T. Canfield or his assigns, free from the encumbrances and trusts of said mortgage.

Said real estate is to be conveyed subject to a mortgage of five hundred thousand dollars ($500,000) to Massachusetts Hospital Life Insurance Company, dated March 1, 1905, and recorded with Suffolk Deeds, Lib. 3025, page 504.

And said Edward T. Canfield covenants for himself and his assigns that so long as he or they

*Exhibit D. 22*—Minutes Mch. 4, 1910.

shall be left in undisturbed and peaceable possession and use of said real estate, he or his assigns will pay the interest on said mortgage to Massachusetts Hospital Life Insurance Company and all taxes and insurance upon said property.

The said Edward T. Canfield also covenants for himself and his assigns that he or said assigns will pay to the Metropolitan Steamship Company said purchase price either in cash or, at his or their option, in the form of three hundred and fifty (350) first mortgage bonds of Metropolitan Steamship Company of one thousand dollars each, with July 1st, 1910, and all subsequent coupons attached, when and as said Metropolitan Steamship Company is able to convey to him or his assigns said real estate above described, with a proper release by said trustee from the encumbrances and trusts of said mortgage;

And it is mutually covenanted and agreed that the proceeds of this sale are to be paid to the trustee of said mortgage, under the provisions of Section 4 of Article IX thereof.

In witness whereof Metropolitan Steamship Company has caused these presents to be executed, and its corporate seal to be hereto affixed, by its president and secretary thereunto duly authorized by vote of its Board of Directors at a meeting duly called for the purpose, and Edward T. Canfield has hereunto set his hand and seal, on this 3rd day of March, 1910.

METROPOLITAN STEAMSHIP COMPANY,

(Signed) By JOHN W. MCKINNON,
*President.*

[SEAL.]

*Exhibit D. 22*—Minutes Mch. 4, 1910.

Attest:

CAMPBELL CARRINGTON (signed.)
*Secretary.*

(Signed) EDWARD T. CANFIELD.

and

Whereas in the judgment of this Board of Directors it is desirable in the proper and judicious management and maintenance of the business of this company to sell Union Wharf property at said price of three hundred fifty thousand dollars ($350,000), and

Whereas in the judgment of the directors of this company the said price of Three hundred fifty thousand dollars ($350,000.) is fair and represents the true value of said property;

Now, therefore, be it resolved that the acceptance by the officers of this company of said proposition for the purchase of said Union Wharf property is hereby ratified and confirmed and that the execution by said officers of said form of contract with the said Canfield for the purchase of said property be and it is hereby approved, and that the proper officers of this corporation are authorized to take such steps as may be necessary or proper in order to secure a release by the trustee of this company's first mortgage on the said Union wharf property from the encumbrances and trusts of said mortgage, and to do such other acts and things as may be in their judgment necessary or proper in order to carry into effect the intent of this resolution, including the formal delivery of possession of said wharf property to the said Canfield under such contract.

*Exhibit D. 22*—Minutes Mch. 4, 1910.

Whereas the following proposition has been made by the Assets Realization Company:

"New York City, March 4th, 1910.

Metropolitan Steamship Company,
New York City.

Gentlemen:

Whereas your company is the owner of a lease for two years on Pier 16, East River, New York City, at an annual rental of $25,-500, which we understand you desire to dispose of,

We hereby offer you $5,387.13 in cash, and assume and agree to pay any balance due Iselin & Delafield for the right to sell said lease and retain the proceeds for our own benefit.

Yours very truly,

ASSETS REALIZATION COMPANY,

By GEORGE E. SHAW,
*President.*"

and

Whereas, the Board of Directors deems it wise and proper to accept the above proposition of the Assets Realization Company;

Now, therefore, be it resolved that such offer be and the same is hereby accepted and the proper officers of this company are authorized and directed to sign a written acceptance of the same and such officers are further authorized, empowered and directed to sign such other instruments and documents and to do such other acts and things as may be necessary and proper to carry such offer and acceptance into proper operation and effect.

*Exhibit D. 22*—Minutes Mch. 4, 1910.

Whereas the Assets Realization Company is willing to enter into a certain agreement, a copy of which is attached to these minutes; and

Whereas, the considerations moving to the said Metropolitan Steamship Company are set forth in the said agreement;

Now, therefore, be it resolved, that the proper officers of this company be and they are hereby authorized, empowered and directed to execute said agreement, and, further, to execute in the name of and on behalf of this company the note for $217,173.14 referred to therein, and, also, the note for $95,000 covering the amount to be loaned to this company by the Assets Realization Company as referred to in the said agreement, and, further, to do such other acts and things as may be necessary from time to time in order to carry said agreement into proper operation and effect.

Whereas John W. McKinnon has offered to execute the following document:

"John W. McKinnon of the City, County and State of New York, in consideration of one hundred dollars and divers other valuable considerations, the receipt of which is hereby acknowledged, hereby covenants with Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, to release said company and does hereby release said company from all obligations arising out of the clause of the agreement between Metropolitan Steamship Company and John W. McKinnon, entered into by the acceptance by said company of the offer contained in a letter of said McKinnon to said company

*Exhibit D. 22*—Minutes Mch. 4, 1910.

dated November 18, 1909, which clause is as follows, to wit:

"It is understood and agreed, however, that your company shall pay or cause to be paid to the undersigned any consideration which it may receive for the sale of the lease of the India Wharf in Boston, when and as soon as the sale of said wharf is effected and the said wharf is released from the lien of the mortgage herein referred to."

In witness whereof the said John W. McKinnon has hereunto set his hand and seal on this day of February, 1910."

and in consideration of the execution by this company of the following agreement to be delivered to the said John W. McKinnon;

"In consideration of the contemporaneous execution by John W. McKinnon of the City, County and State of New York, of a release to Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, of all rights of the said McKinnon under a previous agreement of said company to pay to the said McKinnon any consideration which it might receive for the sale of the lease of the India Wharf in Boston, Massachusetts;

Metropolitan Steamship Company hereby covenants to save the said McKinnon and the Reorganization Managers of the Metropolitan Steamship Company of Maine harmless from all loss, cost or damage arising out of the execution of said release, and the undersigned Metropolitan Steamship Company of New Jersey hereby assumes and agrees to pay any liability which the said

*Exhibit D. 22*—Minutes Mch. 4, 1910.

John W. McKinnon or the Reorganization Managers of the Metropolitan Steamship Company of Maine may be under by reason of certain negotiations between them and the Eastern Steamship Company in reference to the transfer of the lease to said India Wharf.

In witness whereof Metropolitan Steamship Company has caused these presents to be executed and its seal to be hereto affixed, on this day of February, 1912."

Now Therefore Be It Resolved that this company accept said offer from the said John W. McKinnon and the vice-president and the secretary of this company be and they are hereby authorized, empowered and directed to execute in the name of and on behalf of this company the agreement above set forth and to sign such further instruments and to do such other and further acts and things as may be necessary and proper to carry said agreements into operation and effect.

Whereas under a previous resolution of the Board two certain notes of $30,000. each were given to the Atlantic, Gulf & West Indies Steamship Lines; and

Whereas there has been an application by the said Atlantic, Gulf & West Indies Steamship Lines to change the denomination of said indebtedness;

Now Therefore Be It Resolved that the officers of this corporation are authorized in their discretion to issue other notes in such denominations as they may see fit to take the place thereof.

Voted that the resolution passed at a meeting of the Directors on February 9th, 1910, in ref-

erence to the sale to the Assets Realization Company of a certain claim against the Mallory Steamship Company, its directors and officers, be and the same is hereby repealed.

All of the directors having read all previous minutes of meetings of Directors, both general and special, it was moved, seconded and unanimously carried that all of the same be ratified and adopted.

Upon motion made and duly seconded the meeting adjourned.

CAMPBELL CARRINGTON,
*Secretary.*

*Meeting, March 5, 1910.*

A special meeting of the Board of Directors of the Metropolitan Steamship Company (of New Jersey), was held at No. 25 Broad Street, Borough of Manhattan, City of New York, on the 5th day of March, 1910 at four o'clock in the afternoon.

Present:

Messrs John W. McKinnon
George E. Shaw
Edward B. Wire

being all of the members of the Board.

Upon motion duly made, seconded and carried, Mr. Douglas Nicholson was elected Temporary Secretary of the meeting.

Mr. George E. Shaw, the president of the company, called the meeting to order.

Mr. Shaw then tendered his resignation as president and a director of the company, to take effect immediately.

Upon Motion Duly Made, Seconded and Carried, the resignation of Mr. Shaw as President

and a Director of the company was accepted. Mr. Shaw then retired from the meeting.

Mr. McKinnon then took the chair made vacant by the retirement of Mr. Shaw in pursuance of a motion to that effect duly made, seconded and carried.

Upon motion duly made, seconded and carried, Mr. J. Turner Grieve was elected a director and president of the company to fill the unexpired term of Mr. George E. Shaw, resigned.

Mr. Grieve was then notified of his election as president and a director of this company to fill the unexpired term of Mr. George E. Shaw, resigned.

Mr. Grieve thereupon accepted the position of Director and president of the company and entered immediately upon the discharge of his official duties.

Mr. McKinnon then vacated the Chair in favor of Mr. J. Turner Grieve, who presided for the remainder of the meeting.

Mr. McKinnon then tendered his resignation as Vice-president and a Director of the company, to take effect immediately.

Upon motion duly made, seconded and carried, Mr. McKinnon's resignation as vice-president and a director of the company was accepted.

Mr. McKinnon was then notified of the acceptance of his resignation and he thereupon retired from the meeting.

Upon motion duly made, seconded and carried Mr. Joseph B. Righter was elected a director of the company to fill the unexpired term of Mr. McKinnon, resigned.

Mr. Righter was then notified of his election as a director of the company to fill the unexpired term of Mr. McKinnon, resigned, and he there-

upon accepted the office of director and immediately entered upon the discharge of his official duties.

Mr. Campbell Carrington then tendered his resignation as Secretary and Treasurer of the company, to take effect immediately.

Upon motion duly made, seconded and carried, the resignation of Mr. Campbell Carrington as Secretary and Treasurer of the company was accepted.

Upon motion duly made, seconded and carried, Mr. Joseph B. Righter was elected Secretary to fill the unexpired term of Mr. Carrington, resigned.

Mr. Righter was then notified of the action of the Board and thereupon accepted the position of Secretary of the company.

Mr. Edward B. Wire then tendered his resignation as Assistant Secretary and a Director of the company, to take effect immediately.

Upon motion duly made, seconded and carried, Mr. Wire's resignation was accepted, and Mr. Wire was notified of such acceptance and he thereupon retired from the meeting.

Upon motion duly made, seconded and carried, Mr. Douglas Nicholson was elected Assistant Secretary and a Director of the company to fill the unexpired term of Mr. Wire, resigned.

Mr. Nicholson was then notified of his election as Assistant Secretary and a Director of the company to fill the unexpired term of Mr. Wire, resigned, and he thereupon accepted the said offices and immediately entered upon the discharge of his official duties.

Upon motion duly made, seconded and carried, Mr. Nicholson was elected Treasurer of the com-

*Exhibit D. 22*—Minutes Mch. 5, 1910.

pany to fill the unexpired term of Mr. Carrington, resigned.

Mr. Nicholson was then notified of his election as Treasurer of the company, and he thereupon accepted the said office and entered immediately upon the discharge of his official duties.

WHEREAS, a proposition has been made to this company by the Metropolitan Steamship Company, a corporation organized during the year 1910 and existing under the laws of the State of Maine, for the leasing of the steamships, "Yale" and "Harvard," with all their appurtenances, and to purchase the quick assets of this company.

NOW THEREFORE, VOTED:

That the action of the Treasurer of this company in accepting said proposition and in executing in the name and behalf of this company a written agreement with said Metropolitan Steamship Company, organized under the laws of Maine in the year 1910, of the form submitted to this meeting, is hereby approved, ratified and confirmed, and

VOTED: That the Treasurer is authorized to sell any or all of the quick assets of this company at what he finds to be their present value, and to apply the whole or any part of the proceeds of said sale toward the payment of the outstanding demand notes of this company; and

VOTED: That A. A. Ritchie is hereby appointed Auditor of Accounts of this company, and that all checks, drafts, notes or other obligations of this company shall be signed by the Treasurer and countersigned by the said Auditor of Accounts.

*Exhibit D. 22*—Minutes Mch. 8, 1910.

VOTED: That the New York office of this company be fixed at No. 203 Broadway, New York City.

Adjourned,

A true record,

Attest:

DOUGLAS NICHOLSON,
*Secretary.*

(Then follows agreement between Metropolitan Steamship Company and Maine No. 2, Exhibit C. 98.)

*Meeting of March 8, 1910.*

Minutes
of
A Special Meeting of
The Board of Directors of
Metropolitan Steamship Company
(of New Jersey.)

held at the New York office of the company, No. 203 Broadway, Borough of Manhattan, New York City, on the 8th day of March, 1910, at two o'clock in the afternoon.

Present:

Mr. J. Turner Grieve
Mr. Joseph B. Righter
Mr. Douglas Nicholson

being all the directors of the company.

The president of the company, Mr. Grieve, took the chair and called the meeting to order.

Mr. Righter then tendered his resignation as secretary of the company to take effect immediately.

*Exhibit D. 22*—Minutes Oct. 7, 1910.

Upon motion, duly made, seconded and carried, Mr. Righter's resignation as secretary of the company was accepted.

The chair then stated that the next business before the meeting was the election of a secretary to fill the unexpired term of Mr. Righter, resigned.

Upon motion duly made, seconded and carried, Mr. Nicholson was elected secretary of the company to fill the unexpired term of Mr. Righter, resigned.

Mr. Nicholson thereupon accepted the office of secretary of the company and immediately entered upon the discharge of his official duties.

There being no other business before the meeting upon motion duly made, seconded and carried the meeting adjourned.

J. TURNER GRIEVE,
JOSEPH B. RIGHTER,
DOUGLAS NICHOLSON,
*Secretary.*

Attest:

A true record.

Meeting of June 16, 1910, in evidence as C. 53.

*Meeting of October 7, 1910.*

Minutes

of a special meeting of the Board of Directors of the Metropolitan Steamship Company held at the New York office of the company, No. 203 Broadway, in the Borough of Manhattan, City of

*Exhibit D. 22*—Minutes Oct. 7, 1910.

New York, on the 7th day of October, 1910, at two o'clock in the afternoon.

Present:

Messrs. J. Turner Grieve,
Joseph B. Righter, and
Douglas Nicholson,

being all of the directors of the company.

The president of the company, Mr. Grieve, took the chair and called the meeting to order.

The treasurer reported to the board of directors the financial condition of the Company as a result of the operation of the steamships "Yale" and "Harvard" for the season now closed. From this report it appears that the Company is burdened with a large floating debt, and that the various holders of this debt are pressing for immediate payment, and that obligations of the Company for a large amount will fall due in about a year. It also appeared that in spite of the very favorable contract that the Company had made with the Metropolitan Steamship Company of Maine, which gave it the benefit of very expensive dock facilities and of the organization of said Maine corporation and of its freight traffic connections, this Company has not earned a sufficient amount of money during the year to provide for the payment of the interest on its first mortgage bonds falling due January 1st, 1911.

The president thereupon presented to the Board a proposition from the Pacific Navigation Company for the transfer of the steamships "Yale" and "Harvard" to the Pacific coast and their operation there between San Francisco and San Pedro or San Diego, with a guaranty from the Pacific Navigation Company of net earnings

for this Company amounting to considerably more than could be hoped for through the Company's operation of these steamships on the present route.

After discussion, upon motion duly seconded, it was

VOTED: that the proposition of the Pacific Navigation Company be accepted, and that the President and Secretary of this Company are hereby authorized in its name and behalf to execute an indenture with the Pacific Navigation Company substantially of the form hereinafter set forth, and such other incidental or supplementary agreements as in his opinion may tend to secure the performance by the Navigation Company of its obligations under said indenture, and to affix the corporate seal thereto:

(Then follows Operating Agreement between Metropolitan Steamship Company and Pacific Navigation Company, dated October 10, 1910, in evidence as Exhibit C. 34.)

Upon motion duly seconded it was also

VOTED: That in order to provide for the expense of fitting out the "Yale" and "Harvard" for the voyage to the Pacific Coast, and for the expense of such voyage, including additional premiums for insurance, and in order to provide so far as possible for the payment of the embarrassing floating debt of the Company, and in order to secure, if possible, an extension of the time of payment of indebtedness of the Company not yet due, this Company issue its second mortgage six per cent. five year bonds to the principal amount of seven hundred and fifty thousand dollars, each bond to be for the amount of one thousand dollars, such bonds to be issued in the manner and of the form shown in the

draft of mortgage hereafter set forth, and that a mortgage be executed to secure these bonds, substantially of the form hereinafter set forth, and that the president and secretary of the company are hereby authorized to execute said bonds and said mortgage in the name and behalf of this Company, and affix the corporate seal thereto, and that the treasurer is authorized to dispose of said bonds as he may find best for the Company's interest in order to meet the expense of fitting out the steamships "Yale" and "Harvard" for the voyage to the Pacific Coast and the expenses of such voyage and in order to provide for the payment as far as possible of the floating debt of the company and in order to secure, if possible, an extension of the time of payment of some or all of the obligations of the Company not yet due.

(Then follows form of Mortgage—Metropolitan Steamship Company to Alfred C. Greening, dated October 10, 1910, in evidence as C. 188.)

Upon motion duly made it was

VOTED: That for the further security of the bonds to be issued as provided in the vote previously adopted at this meeting, a sinking fund agreement be also made by this Company, and the president and secretary are hereby authorized to execute in the name and behalf of this company, affixing the corporate seal thereto, an indenture of substantially the following form:

(Then follows Sinking Fund Agreement of October 10, 1910, in evidence as C. 189.)

Upon motion duly seconded it was

VOTED: That the executive officers of this company are hereby authorized to do all acts in the name and behalf of this company which they may severally deem necessary or proper in

order to carry into effect the intent of the votes passed at this meeting.

Upon motion duly seconded it was

VOTED: That the action of the Treasurer in arranging with Metropolitan Steamship Company, a corporation of Maine, to commence getting the "Yale" and "Harvard" ready for a voyage to the Pacific Coast, is hereby approved, ratified and confirmed, and that the Treasurer is authorized to make arrangements with Capt. H. W. Goodall for acting in behalf of this company in the completion of said arrangements, and that the Treasurer is authorized to sign contracts in the name and behalf of this Company for the purchase of fuel at ports to be touched on the voyage by the "Yale" and "Harvard," and such other contracts as may be necessary or proper to provide for that voyage, and to pay out of any available funds of the Company all bills incurred in getting the "Yale" and "Harvard" ready for the voyage to the Pacific Coast and all the expenses of said voyage.

Upon motion duly seconded it was

VOTED: That for the purpose of affording further security to those who may acquire the second mortgage bonds of this Company, and for other purposes as stated therein, the Treasurer is authorized to execute in the name and behalf of this Company a trust agreement substantially of the form following:

Form of Trust Agreement.

Memorandum of Agreement between the Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business in the City of New York (hereinafter

called the Steamship Company) and Birdsey E. Case, of said City of New York, as trustee (hereinafter called the Trustee.)

Whereas the said Metropolitan Steamship Company is about starting its steamships, Yale and Harvard, on a voyage from New York to San Diego, Calif., and desires to secure credit for the expenditures necessarily incurred in fitting out said Steamships for said voyage, in placing insurance thereon for said voyage for fuel and supplies in ports to be touched at on said voyage and for other purposes connected with said voyage, and before the purchase of its second mortgage bonds desires to afford to the holders thereof further security against the placing of liens on said Steamships.

Now Therefore the said METROPOLITAN STEAMSHIP COMPANY transfers to the said BIRDSEY E. CASE, as Trustee and the said Trustee receives from the said METROPOLITAN STEAMSHIP COMPANY the sum of One Hundred and Fifty Thousand Dollars in trust, upon the following terms and conditions.

The Trustee is to pay out of said sum, constituting a trust fund, from time to time, upon written directions from the Treasurer of the Steamship Company, such sums as may be then due from the Steamship Company for any of the foregoing purposes, and after receiving a satisfactory certificate signed by the Treasurer of the Steamship Company, stating that all of the debts incurred by the Steamship Company for said purposes have been fully paid, shall pay over any balance remaining in his hands to other creditors of the Steamship Company, in accordance with written directions from the Treasurer of the Steamship Company.

*Exhibit D. 22*—Minutes Oct. 7, 1910.

IN WITNESS WHEREOF the said METROPOLITAN STEAMSHIP COMPANY has caused these presents to be executed by its President and BIRDSEY E. CASE has hereunto set his hand on this eleventh day of October nineteen hundred and ten.

METROPOLITAN STEAMSHIP COMPANY,

By

_____

*President.*

_____

*Treasurer.*

and after the execution of said agreement to pay over to Birdsey E. Case as Trustee, the sum of One Hundred and Fifty Thousand Dollars, and to take such other and further action as may be necessary in order to fully carry into effect the intent of said agreement.

There being no other business before the meeting, upon motion duly made, seconded and carried, the meeting adjourned.

J. TURNER GRIEVE,
JOSEPH B. RIGHTER.

Attest:

A True Record

DOUGLAS NICHOLSON,
*Secretary.*

*Exhibit D. 22*—Minutes Oct. 13, 1910.

*Meeting, October 13, 1910.*

MINUTES

of a special meeting of the Board of Directors of the METROPOLITAN STEAMSHIP COMPANY held in the New York office of the Company at No. 203 Broadway, in the Borough of Manhattan, City of New York, on the 13th day of October, 1910, at eight o'clock in the evening.

Present: Messrs J. Turner Grieve
Joseph B. Righter and
Douglas Nicholson,
being all of the Directors of the Company.

The President of the Company, Mr. Grieve, took the chair and called the meeting to order.

Upon motion duly made, seconded and carried, the record of the last meeting was read and it was

VOTED: That the record of the meeting of this Board held October 7th., 1910, is hereby approved and all the proceedings of this Board as thus recorded are hereby ratified and confirmed.

The Treasurer reported to the Board all the action that he had taken in pursuance of the votes passed at the last meeting of the Directors and on motion duly seconded, Douglas Nicholson not voting, it was unanimously

VOTED: That the doings of the Treasurer under the authority conferred upon him by votes passed at the meeting of the Directors held October 7th, 1910, and particularly in opening a temporary bank account and signing checks in the name and behalf of the Company without the countersignature of the Auditor, are hereby approved, ratified and confirmed.

*Exhibit D. 22*—Minutes Nov 29, 1910.

There being no further business before the meeting, on motion duly made, seconded and carried, the meeting adjourned.

J. Turner Grieve
Joseph B. Righter

Attest: A True Record

Douglas Nicholson,
*Secretary.*

*Meeting, October 27, 1910.*

(Not printed)

*Meeting, November 29, 1910.*

MINUTES OF A SPECIAL MEETING
of the
BOARD OF DIRECTORS
of the
METROPOLITAN STEAMSHIP COMPANY
held at No. 30 Church Street, Borough of Manhattan, New York City, on the 29th day of November, 1910.

Present: MESSRS. RODNEY T. MARTINSEN, THOMAS C. HUGHES and ADOLF L. ENGELKE, comprising the entire Board.

Upon motion, duly made, seconded and carried, it was resolved that LUCIUS H. STEWART be and he hereby is authorized to represent this Company in San Pedro, California, in the settlement of the expenses of the voyage of the Steamers "Yale" and Harvard" from New York City to San Pedro, including especially, the paying off of the crews of the said boats, and in securing from the PACIFIC NAVIGATION

*Exhibit D. 22*—Minutes Nov 29, 1910.

COMPANY payment to this Company of the cost of the ship's stores and provisions upon the said boats upon their arrival at San Pedro, and of the amount realized from the sale of the evaporators and other property on or appurtenant to said ships, which shall no longer be required for their operation; and, upon the arrival of the said boats at San Pedro, to obtain from the said PACIFIC NAVIGATION COMPANY a statement of the financial condition of the NAVIGATION COMPANY at that time, sworn to by its President, and Treasurer, and certified to by a chartered accountant in good standing, showing that there shall have been in good faith paid into the Treasury of the PACIFIC NAVIGATION COMPANY upon subscriptions to its capital stock at least TWO HUNDRED AND FIFTY THOUSAND DOLLARS in cash, and that at that time it shall have as a working capital over and above all debts, liabilities and investments, and in cash in its Treasury at least ONE HUNDRED THOUSAND DOLLARS.

Upon motion, duly made, seconded and carried, it was resolved that the PACIFIC NAVIGATION COMPANY be and they hereby are authorized and directed to advance money for the payment of the expenses of the voyage of the Steamers "Yale" and "Harvard" from New York City to San Pedro out of the first month's payment due from the PACIFIC NAVIGATION COMPANY to this Company upon the arrival of the said boats at San Pedro, and the said PACIFIC NAVIGATION COMPANY are hereby directed to send by New York draft, payable to the order of BIRDSEY E. CASE, Trustee, to him at Pier 9, North River, New York City, the

*Exhibit D. 22*—Minutes Apr. 11, 1911.

balance of the said first month's payment due from the PACIFIC NAVIGATION COMPANY to this Company after the payment of the expenses of the voyage of the Steamers "Yale" and "Harvard" from New York City to San Pedro, California, herein above referred to.

There being no further business before the meeting, upon motion duly made, seconded and carried, the meeting adjourned.

Attest: A true record.

RODNEY T. MARTINSEN,
*Secretary.*

*Meeting, April 11, 1911.*

Minutes of a Special Meeting of the Board of Directors of the Metropolitan Steamship Co., held at the office of the Treasurer, Room 526, No. 30 Church Street, Borough of Manhattan, City of New York, on the 11th day of April, 1911, at 4 o'clock in the afternoon.

Present Messrs. Thomas C. Hughes, Rodney T. Martinsen and Adolph L. Engelke, comprising the entire Board.

Mr. Hughes was chosen Chairman of the meeting, and Mr. Martinsen Secretary thereof.

The Secretary then presented and read to the meeting the resignation of Mr. Nicholson as Secretary of the Company, to take effect immediately.

Upon motion duly made, seconded and carried, the said resignation was accepted.

The Secretary then presented and read to the meeting the resignation of Mr. J. Turner Grieve as President of the Company, to take effect immediately.

*Exhibit D. 22*—Minutes May 1, 1911.

On motion duly made, seconded and carried, the said resignation was accepted.

The Chair then stated that the next business before the meting was the election of officers to fill the places made vacant by the resignation of Messrs. Douglas Nicholson and J. Turner Grieve.

Upon motion duly made, seconded and carried, Mr. Rodney T. Martinsen was elected Secretary of the Company, to fill the unexpired term made vacant by the resignation of Mr. Douglas Nicholson.

Mr. Martinsen thereupon accepted said office.

Upon motion duly made, seconded and carried, Mr. Thomas C. Hughes was elected President of the Company, to fill the unexpired term made vacant by the resignation of Mr. J. Turner Grieve.

Mr. Hughes thereupon accepted said office.

There being no further business before the meeting, on motion duly made, seconded and carried, the meeting adjourned.

Attest: A true record.

R. T. MARTINSEN,
*Secretary.*

*Meeting, May 1, 1911.*

Minutes of a Special Meeting of the Board of Directors of the Metropolitan Steamship Co., held at the office of the Treasurer, Room 526, No. 30 Church Street, Borough of Manhattan, City of New York, on the 1st day of May, 1911, at 10 o'clock in the forenoon.

Present Messrs. Thomas C. Hughes, Rodney T. Martinsen and Adolph L. Engelke, comprising the entire Board.

*Exhibit D. 22*—Minutes May 3, 1911.

Mr. Hughes was chosen Chairman of the meeting, and Mr. Martinsen Secretary thereof.

The Secretary then announced that the business to be taken up at the meeting was the consideration of measures to protect the company from having to pay for rent for India Wharf in Boston, and also to consider the taking out of policies on the Yale and Harvard, and the raising of money on two notes of $25,000. each of the Pacific Navigation Company, due December 29th, 1911; the question of accepting such notes to apply upon the indebtedness of the said company to this company, and to authorize the Treasurer to pay over the funds in the treasury of the company that shall become available for the purpose to a Trustee, to be applied by the Trustee to the payment of interest due July 1st, 1911, on first mortgage bonds of the company, and also toward payment of the insurance premiums on the insurance required by said mortgage.

After some discussion the meeting adjourned until Wednesday, May 3rd, 1911, at 4:30 P. M.

Attest: A true record.

R. T. MARTINSEN,
*Secretary.*

*Meeting, May 3, 1911.*

Minutes of a Special Meeting of the Board of Directors of the Metropolitan Steamship Co., held at the office of the Treasurer, Room 526, No. 30 Church Street, Borough of Manhattan, City of New York, on the 3rd day of May, 1911, at 4:30 o'clock in the afternoon.

*Exhibit D. 22*—Minutes May 3, 1911.

Present Messrs. Thomas C. Hughes, Rodney T. Martinsen and Adolph L. Engelke, comprising the entire Board.

Mr. Hughes was chosen Chairman of the meeting, and Mr. Martinsen Secretary thereof.

VOTED, that the President be and he hereby is authorized to take such steps as he may find best to protect this company from having to pay rent for India Wharf in Boston under the lease thereof to this company and to assign said lease to any other person or corporation.

VOTED, that the president be and he hereby is authorized to take out policies of insurance on the Yale and Harvard for one year from the expiration of the present policies the last of this month.

VOTED, That this company accept from the Pacific Navigation Company two notes for $25,000 each, due December 29th, 1911, to apply upon the indebtedness of said company to this company under the operating agreement between the two companies; and the treasurer is hereby authorized, if possible, to realize on said money to pay the insurance premiums soon to become due for insurance upon the Yale and Harvard during the coming year and for all other necessities of the company; and the Treasurer is hereby authorized to pay over any funds in the treasury of the company that shall become available for the purpose to a trustee, to be applied by said trustee towards payment of interest due July 1st, 1911, on the first mortgage bonds of the company and also toward payment of the insurance premiums on the insurance required by said mortgage.

*Exhibit D. 22*—Minutes May 11, 1911.

There being no further business before the meeting, on motion duly made, seconded and carried, the meeting adjourned.

Attest: A true record.

R. T. MARTINSEN,
*Secretary.*

*Meeting, May 11, 1911.*

Minutes of a Special Meeting of the Board of Directors of the Metropolitan Steamship Co. of N. J., held at the office of the Treasurer, Room 526, No. 30 Church Street, Borough of Manhattan, New York City, on the 11th day of May, 1911, at 10 o'clock in the forenoon.

The Secretary presented and read a Waiver of Notice of the meeting, signed by all the directors, and the same was, on motion duly made, seconded and carried, ordered spread at length upon the minutes.

The following directors were present: Messrs. Thomas C. Hughes and Rodney T. Martinsen. The following Director was absent: Mr. Adolph L. Engelke.

The Chairman then declared that a majority of the Directors were present, and that the meeting was properly organized and competent to proceed to the transaction of business.

Upon motion duly made, seconded and carried, it was

VOTED: That this Company make a request upon the American Trust Company, as Trustee, for a release from the lien of its First Mortgage of all the right, title and interest of this Company in, to and under an indenture of lease of India Wharf in Boston, Massachusetts, and that

the following instrument be executed by the President under the corporate seal of this Company, attested by the Secretary, and forwarded to said American Trust Company, as Trustee:

"METROPOLITAN STEAMSHIP COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, hereby, under and in accordance with Section 1 of Article IX of its indenture of mortgage, dated the 15th day of November, one thousand and nine hundred and nine, to American Trust Company, as Trustee, hereby requests in writing American Trust Company as Trustee under said mortgage, without consideration paid to it, to release from the lien or operation of said indenture of mortgage all of the right, title and interest of Metropolitan Steamship Company in, to or under a certain indenture of lease dated June 1, 1889, between the Central Wharf and Wet Dock Corporation of Massachusetts and the Metropolitan Steamship Company, a Massachusetts corporation, of India Wharf in Boston, Massachusetts, so that the same may be transferred by Metropolitan Steamship Company free and clear of any trust of lien created by said indenture of mortgage, and so that Metropolitan Steamship Company may sell such interest in such indenture of lease and receive the purchase price free and clear from any trust of lien created by said indenture of mortgage, and so that Metropolitan Steamship Company may sell such interest in such indenture of lease and receive the purchase price free and clear from any trust or lien created by said indenture of mortgage.

In Witness Whereof Metropolitan Steamship Company has caused this instrument to be exe-

cuted by its President and its corporate seal, attested by its Secretary, to be hereto affixed, on this day of May, 1911.

METROPOLITAN STEAMSHIP COMPANY,

by

Attest: *President.*

Secretary."

There being no further business before the meeting, on motion duly made, seconded and carried, the meeting adjourned.

Attest: A true record.

R. T. MARTINSEN,
*Secretary.*

*Meeting, June 6, 1914.*

MINUTES of a Meeting of the Board of Directors of the METROPOLITAN STEAMSHIP COMPANY, held at the office of the Company, No. 27 Cedar Street, New York City, on the 6th day of June 1914, at 10.30 A. M.

Present: MESSRS. HUGHES, ENGELKE & MARTINSEN, being all of the Directors of the Company.

The President, Mr. Hughes, took the chair and called the meeting to order.

The Secretary then presided and read to the meeting a Waiver of Notice of the meeting subscribed by all of the Directors.

Upon motion duly made and seconded, it was

VOTED that the said Waiver be ordered on file.

Mr. Martinsen then tendered his resignation as Secretary and Treasurer and as a director of this company to take effect immediately.

*Exhibit D. 22*—Minutes June 6, 1914.

Upon motion duly made and seconded, it was

VOTED that the resignation of Mr. Martinsen as Secretary and Treasurer of the Company and as a Director, be accepted.

The Chairman then announced that the next business before the meeting was the election of a Director and a Secretary and Treasurer of the Company to fill the unexpired term made vacant by the resignation of Mr. Martinsen.

The Chairman appointed Mr. Engelke to act as Secretary of the meeting in the place of Mr. Martinsen resigned.

Upon motion duly made and seconded, it was

Voted that Warren D. Chase be and he hereby is elected a Director of this company and Secretary and Treasurer thereof to fill the unexpired term made vacant by the resignation of Mr. Martinsen.

Mr. Chase then entered the meeting, was notified of his election, accepted same and immediately entered upon the discharge of his duties, relieving Mr. Engelke as secretary of the meeting.

Mr. Hughes then tendered his resignation as President and a Director of the Company to take effect immediately, and

Upon motion duly made and seconded, his resignation was accepted.

Mr. Engelke was then appointed chairman of the meeting.

Upon motion duly made and seconded, it was

VOTED that Mr. Hugo R. von Wessely be and he hereby is, elected a Director and the President of this company to fill the unexpired term made vacant by the resignation of Mr. Hughes.

Mr. von Wessely entered the meeting, was notified of his election, accepted same and entered

upon the discharge of his duties, relieving Mr. Engelke as Chairman of the meeting.

Upon motion duly made and seconded, it was

VOTED that Warren D. Chase be and he hereby is authorized and empowered on behalf of the company to countersign all checks, drafts and other orders for the withdrawal of funds of Alfred C. Greening as Trustee under an indenture between the said Alfred C. Greening, this Company, and the Pacific Navigation Company, known as "Metropolitan Steamship Company Second Mortgage Six per cent. Five Year Bonds sinking fund agreement" in the place and stead of Douglas Nicholson.

Upon motion duly made and seconded. it was

VOTED that the office of the company now at No. 27 Cedar Street, New York City, be transferred immediately to No. 36 Pearl Street, Hartford, Connecticut, and it was

FURTHER VOTED that the funds of this company on deposit with the Guaranty Trust Company may be withdrawn by checks or drafts thereon signed by the Treasurer of the company without countersignature.

Adjourned without date,

WARREN D. CHASE,
*Secretary.*

ADOLF L. ENGELKE
*Secretary.*

R. T. MARTINSEN,
*Secretary.*

*Exhibit D. 22*—Minutes Oct. 23, '15; June 10, '16.

*Meeting, October 23, 1915.*

Minutes of a special meeting of the Board of Directors of the Metropolitan Steamship Company of New Jersey, held at the office of the Treasurer of the Company, at Room No. 312, Connecticut Mutual Life Building, Hartford, Connecticut, on Saturday, October 23, 1915, at 9 o'clock A. M., after adjournment from October 20, 1915, pursuant to legal notice given under the by-laws to all the directors.

Present: Messrs. Hugo R. von Wessely and Warren D. Chase, comprising the entire board, with the exception of Adolph N. Engelke, who sent his resignation.

The Secretary presented Mr. Engelke's resignation to the meeting, and upon motion duly made and seconded it was unanimously accepted.

Mr. Louis W. Chism was then unanimously appointed a director to fill the vacancy caused by the resignation of Mr. Engelke.

*Meeting, June 10, 1916.*

Hartford, Connecticut, June 10, 1916.

A special meeting of the directors of Metropolitan Steamship Company met pursuant to the foregoing notice at the office of the company, Room 312 Connecticut Mutual Life Building, Hartford, Connecticut, at noon on the above date.

All the directors, namely, Messrs. von Wessely, Chism and Chase, were present.

Treasurer Chase explained to the meeting that it was necessary in view of the tentative monthly operating arrangements under which

*Exhibit D. 23.*

The Pacific Navigation Company has been running the "Yale" and "Harvard" on the Pacific Coast since December 16, 1915, without satisfactory results, to enter into some new arrangements under which the company may be sure of deriving sufficient income to maintain its boats and to pay its expenses and charges.

Thereupon, upon motion duly made and seconded, it was unanimously

VOTED, That, subject to the approval of the stockholders of a corporate policy to that effect, the executive officers of this company are hereby authorized to contract on behalf of this company for the operation of its steamships "Yale" and "Harvard" on the Pacific Coast by The Pacific Company, or other party, under such terms as shall secure both the proper maintenance of said ships and a certainty of the financial ability of this company to meet during the life of any such contract all its necessary expenses and fixed charges.

The meeting then adjourned without date.

Attest:

WARREN D. CHASE,
*Secretary.*

## Exhibit D. 23.

Directors' Minute Book No. 2, Metropolitan Steamship Co.

*Meeting, August 7, 1916.*

A meeting of the directors of METROPOLITAN STEAMSHIP COMPANY, having been duly called, was held at the office of the President of the company in Plantsville, Southington, Connecticut, on August 7th, 1916, at 4:50 o'clock P. M.

*Exhibits D. 4—D. 7.*

Present: Messrs. Chase, von Wessely and Chism.

The Treasurer of the company, Mr. Warren D. Chase, reported that the negotiations originally commenced with the Pacific Navigation Company and the Pacific Company for the operation of the steamships "Yale" and "Harvard" had been without success. When this result became apparent, negotiations were entered upon with the Pacific Alaska Navigation Company, a corporation of Maine, well established in the shipping business on the Pacific Coast and successfully operating the so-called "ADMIRAL" Line of steamships from San Francisco north to Puget Sound and Alaskan points.

These negotiations have finally resulted in a proposed contract between that company and this company to be submitted to this meeting.

The contract was then submitted, reading as follows:

(Then follows Operating Agreement between Metropolitan Steamship Company and Pacific Alaska Navigation Company in evidence as .....)

## Exhibit D. 4.

Report of examination of Edward S. Hough, marine surveyor S. S. Harvard and Yale, February 8, 1913. (Not printed.)

## Exhibit D. 6.

Supplemental report of Edward S. Hough, dated Aug. 25, 1913. (Not printed.)

## Exhibit D. 7.

Further report of Edward S. Hough, February 19, 1914. (Not printed.)

## Exhibit D. 24.

Further report of Edward S. Hough, April 8, 1914. (Not printed.)

## Exhibit D. 25.

Further report of Edward S. Hough, Aug. 24, 1914. (Not printed.)

## Exhibit D. 26.

Further report of Edward S. Hough, February 27, 1915. (Not printed.)

## Exhibit D. 27.

Further report of Edward S. Hough, July 21, 1915. (Not printed.)

## Exhibit D. 28.

Further report of Edward S. Hough, August 20, 1915. (Not printed.)

## Exhibit D. 29.

Further report of Edward S. Hough, September 28, 1915. (Not printed.)

## Exhibit D. 30.

Further report of Edward S. Hough, March 21, 1916. (Not printed.)

## Exhibit D. 31.

Further report of Edward S. Hough, September 30, 1916. (Not printed.)

*Exhibit D. 32.*

## Exhibit D. 32.

Metropolitan Steamship Company, stockholders' minute book.

Extract from Stockholders' meetings Metropolitan Steamship Company,

Section 2 of Article II of by-laws, printed on pages 328 and 329 of record.

Sections 4 and 5 of Articles II of the by-laws printed on page 331 of the record.

Sections 1, 2 and 8 of Article III of the by-laws reading as follows:

ARTICLE III.

Directors.

*Section 1.* The business and affairs of the Company shall be managed and controlled by a Board of Directors. The first Board shall consist of three members until such time as the Board of Directors shall determine upon the election of a full Board, and thereafter shall consist of 7 members. The additional members of the Board to fill the vacancies so occasioned by such increase shall be elected by the stockholders at a special meeting called for that purpose. Each Director shall serve for the term for which he shall have been elected and until his successor shall have been duly chosen and qualified.

*Section 2.* In case of any vacancy in the Board of Directors, arising through death, resignation, disqualification or other cause, the remaining Directors, by an affirmative vote of a majority thereof, may elect a successor to hold office for the unexpired portion of the term of the Director whose place shall be vacant and until the election and

acceptance of a successor. Any Director or other elected officer, may resign his office at any time. The acceptance of a resignation shall not be required to make it valid.

*Section 8.* After each annual election of Directors, the newly elected Directors may meet for the purpose of organization, the election of officers, and the transaction of other business at such place and time as shall be fixed by the stockholders at the annual meeting, and if the majority of the Directors be present at such time and place, no prior notice of such meeting shall be required to be given to the Directors. The Directors may also fix the time and place of such meeting by a written consent.

## FIRST MEETING OF INCORPORATORS.

*November 11, 1909.*

The first meeting of the Corporation was held on the 19th day of November, 1909, at 5 o'clock in the afternoon, at the principal office of the Company, No. 15 Exchange Place, Jersey City, N. J., pursuant to a written waiver of notice signed by all the incorporators, fixing said time and place, as follows:

WE, THE UNDERSIGNED, being all the incorporators of the METROPOLITAN STEAMSHIP COMPANY, DO HEREBY WAIVE all notice, statutory or otherwise, of this meeting of incorporators, and fix the 19th day of November, 1909, at 5 o'clock in the afternoon, at No. 15 Exchange Place, Jersey City, N. J., as the time and place of said meeting, and do consent to the transaction of any business, including the adop-

tion of by-laws, the election of directors, to pass upon an offer for the transfer of certain property to the corporation, to provide for the issue of $3,000,000. par value of bonds of this Company and execution of a mortgage to secure the same and the execution and issue of $500,000. of Two Year Notes and any other business which may come before the said meeting.

Thomas Achenbach,
Jesse Meyers,
Ernest J. Ellenwood.

The following incorporators were present in person:

| *Name.* | *Number of Shares.* |
|---|---|
| Thomas Achenbach | 7 |
| Jesse Myers | 2 |
| Ernest J. Ellenwood | 1 |

being all the incorporators of the Company.

Upon motion, Mr. Thomas Achenbach was elected Chairman and Mr. Ellenwood was appointed Secretary of the meeting.

The Secretary presented and read the above waiver of notice of the meeting, signed by all the incorporators, which was approved and ordered on file.

The Chairman reported that the certificate of incorporation of the Company was recorded in the office of the Clerk of Hudson County on the 8th day of November, 1909, and was filed and recorded in the office of the Secretary of State of the State of New Jersey on the 8th day of November, 1909, and presented a certified copy of said certificate of incorporation.

The Secretary was instructed to cause a copy of said certificate of incorporation to be inserted in the minute book of the Company.

*Exhibit D. 32*—Minutes Nov. 19, 1909.

The Secretary presented the subscriptions to the capital stock, amounting in the aggregate to $1,000 and stated that the same had been paid in full. Such subscriptions and the payment thereof were approved, ratified and confirmed, and the officers of this Company when elected are directed to issue certificates therefor.

The transfer and stock books of the Company were presented, showing the names and addresses of the shareholders and the number of shares held by them.

The meeting then proceeded to the election of a Board of three Directors.

Messrs. S. A. Anderson and C. H. Jarvis, neither of them being a candidate for the office of Director, were appointed Inspectors of Election, and the following oath was duly administered to them:

STATE OF NEW JERSEY
COUNTY OF HUDSON } *ss.*

S. A. Anderson and C. H. Jarvis being severally duly sworn upon their respective oaths, depose and say that they will faithfully, honestly and impartially perform the duties of Inspectors of Election at the election to be held this day for METROPOLITAN STEAMSHIP COMPANY, and a true report make of the same.

*Exhibit D. 32*—Minutes Nov. 19, 1909.

S. A. Anderson
C. H. Jarvis

Subscribed and sworn to this
19th day of November, 1909,
before me.

Harry W. Meen,
Notary Public
N. J.

[Seal]

Messrs. Thomas Achenbach, Jesse Myers and Ernest J. Ellenwood were nominated for Directors of the Company, to hold office for one year and until their successors are elected and qualify.

No other nominations have been made, the polls were duly opened and a ballot having been duly had, and all the stockholders having voted, the polls were declared closed and the Inspectors presented their certificate showing that the aforesaid gentlemen had been duly elected Directors of the Company, the certificate being as follows:

THE UNDERSIGNED, Inspectors of Election, report that having taken an oath impartially to conduct the election of Directors of METROPOLITAN STEAMSHIP COMPANY, we did receive the votes of the stockholders by ballot, and that the following persons received the number of votes set opposite their respective names, to wit:

| *For Directors* | *Number of Votes* |
|---|---|
| Thomas Achenbach | 10 |
| Jesse Myers | 10 |
| Ernest J. Ellenwood | 10 |

Dated Nov. 19th, 1909.

S. A. Anderson,
C. H. Jarvis,
*Inspectors.*

*Exhibit D. 32*—Minutes Nov. 19, 1909.

The said persons were thereupon declared duly elected.

The Secretary presented a form of by-laws for the regulation of the affairs of the Company, which were read article by article and unanimously adopted and directed to be spread upon the minutes.

Upon motion duly made, seconded and carried, the following resolution was unanimously adopted:

That in compliance with the laws of the State of New Jersey and the charter of the Company, the principal office of the Company in the State of New Jersey be established and maintained at No. 15 Exchange Place, Jersey City, N. J.

That a sign with the Company's name thereon be conspicuously displayed at the entrance of said office.

That a transfer book, in which transfers of stock shall be registered, and stock book, containing the names and addresses of the stockholders and the number of shares held by each, be kept at said office open to the inspection of stockholders, as required by law.

That the Corporation Trust Company be and it is hereby appointed Agent of this Company, in charge of said office and books, and that process against this Company may be served upon said Trust Company.

That said Corporation Trust Company be and it hereby is authorized to register transfers of stock.

The following offer and agreement was then presented to this meeting:

(Then follows McKinnon offer printed as part of minutes of directors' meeting of November 19, 1909).

*Exhibit D. 32*—Minutes Dec. 2, 1909.

*Meeting, December 2, 1909.*

MINUTES of a Special Meeting of Stockholders of *Metropolitan Steamship Company,* held pursuant to due notice and waiver of notice on the 2nd day of December, 1909, at 2:00 o'clock P. M. at the principal office of the Company, No. 15 Exchange place, Jersey City, N. J.

The following were present in person:

| *Name* | *Number of Shares* |
|---|---|
| Thomas Achenbach | 7 |
| Ernest J. Ellenwood | 1 |

The following were represented by proxy:

| *Name* | *Name of Proxy* | *Number of Shares* |
|---|---|---|
| George E. Shaw and John W. McKinnon, Reorganization Managers, | Thomas Achenbach | 28,749 |
| Jesse Myers | Thomas Achenbach | 2 |
| | Total | 28,759 shares |

The President occupied the Chair.

The President then stated to the meeting that the meeting was called pursuant to resolution of the Board of Directors of this Company for the purpose of considering a proposition to decrease the capital stock of the said Company to One million five hundred thousand dollars ($1,500,000.) so that the total capital stock shall be One million five hundred thousand dollars ($1,500,000) par value, and to issue for the purpose of retiring said shares of stock One million five hundred thousand dollars ($1,500,000.) par value, of notes of the said Company, and to determine the form of said notes and the method of effect-

ing such decrease and the disposition of said notes.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED, to amend the certificate of incorporation by decreasing the capital stock of this Company by Fifteen thousand (15,000) shares, so that the capital stock shall be Fifteen thousand (15,000) shares of the par value of One hundred dollars ($100.) each in the place of Thirty thousand (30,000) shares of the par value of One hundred dollars ($100.) each, the present capital stock.

FURTHER RESOLVED, That for the purpose of effecting such decrease, this Company execute and issue One million five hundred thousand dollars ($1,500,000.) par value, of notes of this Company in the following form:

(Then follows form of ten-year note)

that such notes be made of such denomination as may be required for the purposes of effecting these resolutions; that said notes be signed by the President and Treasurer of this Company, and that the seal of the corporation be omitted; that the said notes be issued and delivered in accordance with the terms of these resolutions, and when so signed and issued, shall be considered and be the valid, lawful, corporate act of this corporation performed by due corporate authority; that an offer be made to the stockholders of record of this Company to surrender their shares of stock ratably to the extent of Fifteen thousand (15,000) shares in all, each stockholder having the opportunity to surrender fifty per cent (50%) of his holdings of stock of this Company, each shareholder so surrendering his shares of stock to accept therefor notes of

this Company in the form aforesaid, receiving notes of a par value equal to the par value of the shares of stock so surrendered; that for the purpose of giving such opportunity to the shareholders, five (5) days' notice be given to each shareholder of record to present and deliver their shares of stock, duly endorsed, for the purpose of retirement, and the receipt of notes in place thereof as aforesaid, and if within such time any shareholder shall neglect or refuse to make such surrender and accept such notes in place of such shares, the Board of Directors shall cause the privilege of such shareholder to be transferred to the other shareholders who may desire to surrender shares of stock on such terms, and if such privilege shall be given in accordance with these resolutions, the retirement of such shares and the issue of notes therefor shall be conducted in the manner herein provided. All shares of stock, when surrendered, shall be cancelled and retired. The notes shall be dated the 15th day of November, 1909, irrespective of the actual date of issue.

FURTHER RESOLVED, That the proper officers of this Company prepare, file and publish the necessary certificate and assents as required by law.

No further business being presented, upon motion duly made, seconded and carried, the meeting adjourned.

.....

*Secretary.*

*Exhibit D. 32*—Minutes Nov. 18, 1910.

*Meeting—November 18, 1910.*

The Annual Meeting of Stockholders was held at the office of the Company, No. 15 Exchange Place, Jersey City, N. J. on the 18th day of November, 1910, at 2:00 P. M.

The meeting was called to order by MR. THOMAS C. HUGHES, who, upon motion, duly made and seconded, was chosen Chairman, and MR. RODNEY T. MARTINSEN was appointed Secretary of the meeting.

The Secretary presented the alphabetical list, required by statute, of the Stockholders entitled to vote at this meeting, and reported that the following Stockholders were present in person:

| *Names* | *No. of Shares* |
|---|---|
| Thomas C. Hughes | 1 |
| Rodney T. Martinsen | 1 |
| Adolf L. Engelke | 1 |

and that the following Stockholders were represented by proxy:

| *Names* | *Names of Proxies* | *No. of Shares* |
|---|---|---|
| The Chilmark Company | Rodney T. Martinsen | 14370 |

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxies presented were ordered to be filed with the Secretary of the meeting.

The Secretary presented and read a copy of the notice of the meeting, together with proof of the due publication thereof, as required by the by-laws.

The transfer book and the stock book of the Company were produced and remained during the meeting open to inspection.

*Exhibit D. 32*—Minutes Nov. 18, 1910.

Upon motion duly made and seconded, the reading of the minutes of the last preceding meeting of Stockholders was dispensed with.

Messrs. Charles H. Jarvis and Thomas Joyce (neither of them being a candidate for the office of director) were appointed inspectors of election and duly sworn.

The meeting then proceeded to the election of directors, by ballot, in accordance with the by-laws, and the polls were opened at 2:03 P. M. and the Stockholders prepared their ballots and delivered them to the inspectors.

The report of the President for the past year was presented and read and ordered to be received and filed with the Secretary.

The report of the Treasurer for the past year was presented and read and ordered to be received and filed with the Secretary.

Upon motion duly made, seconded and carried, it was resolved that the action of the Board of Directors of this Company in selling the following steamships owned by this Company, to wit: the vessel called the H. M. Whitney, the vessel called the H. F. Dimock, the vessel called the James S. Whitney, the vessel called the Herman Winter, the vessel called the James Anderson, the vessel called the William S. McGowan, the vessel called the N. Hayden, the vessel called the C. H. Prior, the vessel called the J. W. Walker, the vessel used as a car float and called the Eastern, and the vessel used as a car float and called the Western, for the sum of Six Hundred and Fifty thousand dollars ($650,000) in this company's first mortgage bonds, be and the same hereby is in all respects ratified, approved and confirmed.

*Exhibit D. 32*--Minutes Nov. 18, 1910.

Upon motion duly made, seconded and carried, it was resolved that the action of the Board of Directors of this Company in selling to Edward T. Canfield and his assigns, for the sum of Three Hundred and Fifty Thousand dollars ($350,000.) the equity of this Company in the Union Wharf property in Boston, Massachusetts, is hereby ratified, approved and confirmed.

Upon motion duly made, seconded and carried, it was resolved that the action of the Treasurer of this Company in executing an agreement dated March 5, 1910, by which this Company leased to the Metropolitan Steamship Company of Maine, the Steamships "Yale" and "Harvard" for the term of one year from the date thereof upon the terms and conditions therein set forth, be and the same hereby is in all respects ratified, approved and confirmed.

Upon motion duly made, seconded and carried, it was resolved that the action of the Board of Directors of this Company at its meeting held March 5th, 1910, authorizing the Treasurer of this Company to sell any or all of the Quick Assets of this Company at what he should find to be their present value, and to apply the whole or any part of the proceeds of such sale toward the outstanding demand notes of this Company, and also the action of the Treasurer under said authority, be and the same hereby are in all respects ratified, approved and confirmed.

Upon motion duly made, seconded and carried, it was resolved that the action of the Directors of this Company at their meeting held on the 7th day of October, 1910, in authorizing the execution of an indenture between this Company and Pacific Navigation Company dated the 10th

day of October, 1910, and the action of the officers of this Company in executing said indenture are hereby approved, ratified and confirmed.

Upon motion duly made, seconded and carried, it was resolved that the action of the Directors of this Company at their meeting held on the 7th day of October, 1910. in authorizing the issue of the second mortgage six per cent. five year bonds of this Company for the principal amount of Seven Hundred and Fifty Thousand Dollars ($750,000.) and the execution of a mortgage and sinking fund agreement to secure said bonds, and their action at their meeting held October 27th, 1910, in authorizing the execution of an instrument adding certain sectios to said mortgage omitted through a clerical error and the action of the officers of this Company in executing said instruments, are hereby approved, ratified and confirmed.

The polls having remained open the period prescribed by statute were ordered closed and the inspectors presented their report in writing, showing that the following persons, Stockholders of the Company, had received the greatest number of votes:

Rodney T. Martinsen
Thomas C. Hughes
Adolf L. Engelke

The Chairman thereupon declared that the above named persons were duly elected directors of the Company.

*Exhibit D. 32*—Minutes Nov. 18, 1910.

Upon motion duly made and seconded, the Secretary was directed to file with the records of the Company for the purpose of reference the following papers:

LIST OF STOCKHOLDERS
ENTITLED TO VOTE AT THIS MEETING.

| *Name* | *Address* | *Shares* |
|---|---|---|
| Matthew W. Boylan, | Brooklyn, N. Y. | 1 |
| Campbell Carrington, | 25 Broad St., New York | 7 |
| William Correll | | 1 |
| Adelaide Cole Chase, | 8 Marlborough St., Boston, Mass. | 1 |
| The Chilmark Company, | 203 Broadway, New York | 14370 |
| Hornblower & Weeks | | 54 |
| Thomas C. Hughes, | 215 Montague St., Brooklyn, N. Y. | 1 |
| John W. McKinnon, | 25 Broad St., New York. | 1 |
| William Mosman | | 1 |
| James T. Morse, | Pinckney St., Boston, Mass. | 1 |
| Rodney T. Martinsen, | 30 Church St., New York | 1 |
| Minnette V. Newman | c/o Louis N. W. Vanpel, 35-41 North St., Boston, Mass. | 1 |
| Emma J. Sinclair, | c/o P. W. Whittemore, 100 Boylston St., Boston, Mass. | 5 |
| William C. Watt | | 552 |
| Edward B. Wire | | 2 |
| Francis C. Welsh, | c/o W. C. Wainwright & Co., 60 State Street, Boston, Mass. | 1 |
| & Francis J. Moors, Trustees U/W Clarence W. Jones. | | |

*Exhibit D. 32*—Minutes Nov. 17, 1911.

*Meeting, November 17, 1911.*

The annual meeting of stockholders was held at the office of the Company, No. 15 Exchange Place, Jersey City, N. J., on the 17th day of November, 1911, at 2 P. M.

The meeting was called to order by Mr. Thomas C. Hughes, who upon motion, duly made and seconded, was chosen Chairman, and Mr. Rodney T. Martinsen was appointed Secretary of the meeting.

The Secretary presented the alphabetical list, required by statute, of the stockholders entitled to vote at this meeting, and reported that the following stockholders were present in person:

| *Names.* | *No. of Shares* |
|---|---|
| Thomas C. Hughes | 1 |
| Adolf L. Engelke | 1 |
| Rodney T. Martinsen | 1 |

and that the following stockholders were represented by proxy:

| *Names* | *Proxy* | *No. of Shares* |
|---|---|---|
| The Chilmark Company, | Douglas Nicholson | 14370 |
| | Total | 14,373 |

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxies presented were ordered to be filed with the Secretary of the meeting.

The Secretary presented and read a copy of the notice of the meeting, together with proof of the due publication thereof as required by the by-laws.

The transfer book and the stock book of the Company were produced and remained during the meeting open to inspection.

*Exhibit D. 32*—Minutes Nov. 17, 1911.

Messrs. John R. Turner and C. H. Jarvis (neither of them being a candidate for the office of director) were appointed inspectors of election and duly sworn.

The meeting then proceeded to the election of directors, by ballot, in accordance with the by-laws, and the polls were opened at 2:05 P. M. and the stockholders prepared their ballots and delivered them to the inspectors.

The President reported to the stockholders that the company found itself during the year with a lease on its hands for India Wharf in Boston, for which Wharf it had no possible use whatever. Fearing that the company might become liable to pay rent for this wharf unless some satisfactory permanent arrangement could be made with regard to it, the Directors authorized the President to investigate and protect the company from having to pay rent for this wharf. In pursuance of this vote, negotiations were entered into, which resulted in the assignment of the lease of India Wharf after a release of this India Wharf lease from the lien of the first mortgage, and the assignee assumed, with the assent of the lessor, the payment of all rent thereafter under the lease.

Thereupon it was

VOTED, That the action of the Directors and Officers of this Company in securing a release from the lien of the First Mortgage of this company of the lease of India Wharf in Boston and the assignment of said lease, are hereby approved, ratified and confirmed.

Thereafter, upon the suggestion of one of the stockholders, all the records of meetings of the Directors since the last annual meeting of stockholders were read to meeting and upon motion duly seconded it was unanimously

*Exhibit D. 32*—Minutes Nov. 17, 1911.

VOTED, that all the actions of the directors and officers of the company since the last annual meeting of stockholders held November 18th, 1910, are hereby approved, ratified and confirmed.

The polls having remained open to the period prescribed by statute, were ordered closed and the inspectors presented their report in writing, showing that the following persons, stockholders of the Company, had received the greatest number of votes;

Thomas C. Hughes,
Rodney T. Martinsen,
Adolf L. Engelke.

The Chairman thereupon declared that the above named persons were duly elected directors of the Company.

Upon motion, duly made and seconded, the Secretary was directed to file with the records of the Company, for the purpose of reference, the following papers.

Copy of Alphabetical List of Stockholders.

| *Name* | *Residence* | *Shares* |
|---|---|---|
| Braker, Katherine G., | c/o Garfield Natl. Bnk., 5th Ave. & 23rd St., N. Y. | 1 |
| Carrington, Campbell | | 7 |
| Correll, William, | | 1 |
| Chase, Mrs. Adelaide Cole | | 1 |
| Chilmark Co., The | | 14,370 |
| Engelke, Adolf L., | Englewood, N. J. | 1 |
| Fernald & Co., George A., | Boston, Mass. | 54 |
| Hughes, Thomas C., | Brooklyn, N. Y. | 1 |
| McKinnon, John W. | | 1 |
| Mosman, William, | | 1 |
| Morse, James T. | | 1 |
| Martinsen, Rodney T., | 30 Church St., New York | 1 |

*Exhibit D. 32*—Minutes Nov. 15, 1912.

| | |
|---|---|
| Morse, Jennie R. | 3 |
| Newman, Minette V., | 1 |
| Rublee, George, 32 Liberty St., New York | 25 |
| Sinclair, Emma J. | 5 |
| Watt, William C. | 532 |
| Wire, Edward B. | 2 |
| Welch, Francis C. and Moors, Francis J. Trustees, c/o of Clarence W. Jones | 1 |
| | 15,000 |

*Meeting, November 15, 1912.*

The Annual Meeting of Stockholders of the METROPOLITAN STEAMSHIP COMPANY, was held at the office of the Company No. 15 Exchange Place, Jersey City, N. J. on the 15th day of November, 1912, at 2 P. M.

The meeting was called to order by Mr. Thomas C. Hughes who, upon motion, duly made and seconded was chosen Chairman and Mr. Rodney T. Martinsen was appointed Secretary of the meeting.

The Secretary presented the alphabetical list of the stockholders entitled to vote at this meeting as required by statute and reported that the following stockholders were present in person.

| *Names* | *No. of Shares* |
|---|---|
| Adolf L. Engelke | 1 |
| Thomas C. Hughes | 1 |
| Rodney T. Martinsen | 1 |

and that the following stockholders were presented by proxy:

| *Names* | *Proxies* | *No. of Shares* |
|---|---|---|
| The Chilmark Co. | Douglas Nicholson | 14,370 |

*Exhibit D. 32*—Minutes Nov. 15, 1912.

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxies presented were ordered to be filed with the Secretary of the meeting.

The Secretary presented and read a copy of the notice of the meeting, together with the proof of the due publication thereof as required by the by-laws.

The transfer book and the stock book of the Company were produced and remained during the meeting open to inspection.

Messrs. L. H. Gunther and C. H. Jarvis, neither of them being a candidate for the office of Director, were appointed Inspectors of Election and duly sworn.

The meeting then proceeded to the election of Directors by ballot in accordanc with the by-laws and the polls were opened at 2:40 P. M. and the stockholders prepared their ballots and delivered them to the inspectors.

The Minutes of the meeting of the Board of Directors of the Company held on December 8, 1911, were then read and upon motion duly made, seconded and unanimously carried, were ratified, approved and confirmed in all respects.

Upon motion duly made, seconded and carried, it was

VOTED that all the actions of the Directors and Officers of the Company since the last annual meeting of stockholders, held November 17. 1911, are hereby approved, ratified and confirmed.

The polls having remained open the period prescribed by statute were ordered closed and the Inspectors presented their report in writing, showing that the following persons, stock-

holders of the Company had received the greatest number of votes.

| | |
|---|---|
| Thomas C. Hughes | 14,373 votes |
| Adolf L. Engelke | 14,373 votes |
| Rodney T. Martinsen | 14,373 votes |

The chairman thereupon declared that the above named persons were duly elected Directors of the Company.

Upon motion duly made, seconded and carried, the Secretary was directed to file with the records of the Company for the purpose of reference, the following papers:

1. Alphabetical list of Stockholders.
2. Proxies.
3. Notice of Meeting and proof of publication thereof.
4. Inspectors' Oath and Report.

METROPOLITAN STEAMSHIP COMPANY

Organized Under the Laws of New Jersey

Alphabetical List of Stockholders

At closing of books on the 26th day of October, 1912

| Name | Residence | Shares Common | Shares Preferred |
|---|---|---|---|
| Braker, Katherine G. | c/o Garfield Nat'l Bnk. 5th Av. 23rd St. New York | 1 | |
| Carrington, Campbell | 25 Broad St. N. Y. | 7 | |
| Correll, William | | 1 | |
| Chase, Mrs. Adelaide Cole, | 8 Marlborough St. Boston, Mass. | 1 | |
| Chilmark Co. The | 1 Madison Av. N. Y. | 14,370 | |
| Engelke, Adolf L. | Engelwood, N. J. | 1 | |

*Exhibit D. 32*—Minutes Nov. 21, 1913.

| Name | Residence | Shares Common | Shares Preferred |
|---|---|---|---|
| Fernald & Co. | George A. Boston, Mass. | 54 | |
| Hughes, Thomas C. | 215 Montague St. Blyn. | 1 | |
| McKinnon, John W. | 25 Broad St. N. Y. | 1 | |
| Mosman, William | | 1 | |
| Morse, James T. | Pinckney St. Boston, Mass. | 1 | |
| Martinsen, Rodney T. | 30 Church St. N. Y. | 1 | |
| Morse, Jennie R. | | 3 | |
| Newman, Minette V. | c/o Louis N. W. Vanpel 35-41 North St. Boston, Mass. | 1 | |
| Rublee, George | 32 Liberty St. New York | 25 | |
| Sinclair, Emma J. | c/o P. W. Whittemore, 100 Boylston St. Boston, Mass. | 5 | |
| Watt, William C. | | 523 | |
| Wire, Edward B. | | 2 | |
| Welch, Francis C. and Moors, Francis J. Trustees | u/w of Clarence W. Jones c/o W. Wainwright & Co. 60 State St. Boston, Mass. | 1 | |
| | | 15,000 | |

*Meeting, November 21, 1913.*

The Annual Meeting of Stockholders was held at the office of the Company, No. 15 Exchange Place, Jersey City, N. J. on the 21st day of November, 1913, at 2 P. M.

The meeting was called to order by Mr. Thomas C. Hughes, who, upon motion, duly

*Exhibit D. 32*—Minutes Nov. 21, 1913.

made, seconded and carried was chosen Chairman, and Mr. Rodney T. Martinsen was appointed Secretary of the meeting.

The Secretary presented the alphabetical list, required by statute, of the stockholders entitled to vote at this meeting, and reported that the following stockholders were present in person.

| Names | No. of Shares |
|---|---|
| Adolf L. Engelke | 1 |
| Thomas C. Hughes | 1 |
| Rodney T. Martinsen | 1 |

and that the following stockholders were represented by proxy:

| Names | Names of Proxies | No. of Shares |
|---|---|---|
| Chilmark Co. | J. Turner Grieve | 14,370 |

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxies presented were ordered to be filed with the Secretary of the meeting.

The Secretary presented and read a copy of the notice of the meeting, together with proof of the due publication thereof as required by the by-laws.

The transfer book and the stock book of the Company were produced and remained during the meeting open to inspection.

Messrs. L. H. Gunther and John R. Turner (neither of them being a candidate for the office of director) were appointed inspectors of election and duly sworn.

The meeting then proceeded to the election of directors, by ballot, in accordance with the by-laws, and the polls were opened at 2:05 P. M. and the stockholders prepared their ballots and delivered them to the inspectors.

*Exhibit D. 32*—Minutes Nov. 20, 1914.

Upon motion duly made, seconded and carried, it was:

VOTED: that all the actions of the Directors and officers of the Company, since the last annual meeting of the stockholders, held on November 15th, 1912, are hereby ratified, approved and confirmed.

The polls having remained open to the period prescribed by statute, were ordered closed and the inspectors presented their report in writing, showing that the following persons, stockholders of the Company, had received the greatest number of votes:

| | |
|---|---|
| Thomas C. Hughes | 14,373 votes |
| Adolf L. Engelke | 14,373 votes |
| Rodney T. Martinsen | 14,373 votes |

The Chairman thereupon declared that the above named persons were duly elected directors of the Company.

Upon motion duly made, seconded and carried, the Secretary was directed to file with the records of the Company, for the purpose of reference, the following papers:

1. List of stockholders entitled to vote at this meeting.
2. Proxies presented at the meeting.
3. Notice of meeting and proof of mailing thereof.
4. Inspectors' Oath and Report.

*Meeting, November 20, 1914.*

The Annual Meeting of Stockholders was held at the office of the Company, No. 15 Exchange Place, Jersey City, N. J. on the 20th day of November, 1914, at 2 P. M.

*Exhibit D. 32*—Minutes Nov. 20, 1914.

The meeting was called to order by Mr. Adolf L. Engelke, who, upon motion, duly made, seconded and carried, was chosen Chairman, and Mr. J. Turner Grieve was appointed Secretary of the meeting.

The Secretary presented the alphabetical list, required by statute, of the stockholders entitled to vote at this meeting, and reported that the following stockholders were present in person.

| Names | No. of Shares |
|---|---|
| Adolf L. Engelke | 1 |

and that the following stockholders were represented by proxy:

| Names | Names of Proxies | No. of Shares |
|---|---|---|
| Chilmark Company | J. Turner Grieve | 14,370 |

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxies presented were ordered to be filed with the Secretary of the meeting.

The Secretary presented and read a copy of the notice of the meeting, together with proof of the due publication thereof as required by the by-laws.

The transfer book and the stock book of the Company were produced and remained during the meeting open to inspection.

Messrs. H. A. Black and C. H. Jarvis (neither of them being a candidate for the office of director) were appointed inspectors of election and duly sworn.

The meeting then proceeded to the election of directors, by ballot, in accordance with the by-laws, and the polls were opened at 2 P. M., and the stockholders prepared their ballots and delivered them to the inspectors.

*Exhibit D. 32*—Minutes Nov. 19, 1915.

Upon motion duly made, seconded, and carried, it was:

VOTED: that all the actions of the Directors and officers of the Company, since the last annual meeting of the stockholders, held on November 21st, 1913, are hereby ratified, approved and confirmed.

The polls having remained open to the period prescribed by statute, were ordered closed and the inspectors presented their report in writing, showing that the following persons, stockholders of the Company, had received the greatest number of votes:

| | |
|---|---|
| Warren D. Chase | 14731 votes |
| Hugo R. von Wessely | 14731 " |
| Adolf L. Engelke | 14731 " |

The Chairman thereupon declared that the above named persons were duly elected directors of the Company.

Upon motion, duly made, seconded, and carried, the Secretary was directed to file with the records of the Company, for the purpose of reference, the following papers:

(1) List of stockholders entitled to vote at this meeting.

(2) Proxies presented at the meeting.

(3) Notice of meeting and proof of mailing thereof.

(4) Inspectors' Oath and Report.

*Meeting, November 19, 1915.*

MINUTES of the annual meeting of stockholders of the METROPOLITAN STEAMSHIP COMPANY, held at the office of the Company, No. 15 Exchange Place, Jersey City, N. J.,

*Exhibit D. 32*—Minutes Nov. 19, 1915.

on the 19th day of November, 1915, at 2 P. M.

The meeting was called to order by Mr. J. Turner Grieve, who upon motion duly made, seconded and carried, was chosen Chairman and Secretary of the meeting.

The Secretary then presented the alphabetical list required by Statute of the stockholders entitled to vote at this meeting and reported that the following stockholder was represented by proxy.

| Names | Names of Proxies | No. of Shares |
|---|---|---|
| The Chilmark Co. | J. Turner Grieve | 14,370. |

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxy presented was ordered to be filed with the Secretary of the meeting.

The Secretary presented and read a copy of the Notice of Meeting, together with proofs of publication, as required by the by-laws.

The transfer book and the stock book of the company were produced and remained during the meeting open to inspection.

Messrs. H. A. Black and Philip L. Nieser (neither of them being a candidate for the office of director) were appointed Inspectors of Election and duly sworn.

The meeting then proceeded to the election of directors by ballot in accordance with the by-laws and the polls were open at 2 P. M. and the stockholders prepared their ballots and delivered them to the Inspectors.

The polls having remained open for the period prescribed by statute, were ordered closed and the Inspectors presented their report in writing showing that the following persons, stock-

holders of the company, had received the greatest number of votes:

Warren D. Chase
Hugo R. von Wessely
Louis W. Chism.

The Chairman thereupon declared that the above named persons were duly elected directors of the company.

Upon motion duly made, seconded and carried, the Secretary was directed to file with the records of the company for the purpose of reference, the following papers:

1. List of stockholders entitled to vote at this meeting,
2. Proxy presented at the meeting,
3. Notice of meeting and proofs of publication,
4. Inspectors' oath and report.

No further business coming before the meeting, upon motion duly made, seconded and carried, the same adjourned.

J. TURNER GRIEVE,
*Secretary of the Meeting.*

*Special Meeting, June 12, 1916.*

Minutes of a Special Meeting of the Stockholders of Metropolitan Steamship Company held at the office of the company No. 15 Exchange Place, Jersey City, N. J., on the 12th day of June, 1916, at 3 P. M.

By unanimous consent President R. H. von Wessely and Secretary Warren D. Chase acted as chairman and secretary of the meeting respectively.

The secretary presented an alphabetical list of the stockholders entitled to vote at the meet-

ing and called the roll for the same. The following stockholders were present in person:

| | |
|---|---|
| Warren D. Chase | 1 share |
| George A. Fernald of the firm of Geo. A. Fernald & Co. | 54 shares |
| H. R. von Wessely | 1 share. |

The Chilmark Company was represented by Warren D. Chase who held its proxy for 14,370 shares. Said proxy was placed on file and the chairman announced that a quorum was present and represented.

Mr. Higley, the treasurer of the Hudson Navigation Company, attended the meeting without a proxy, stating that Mr. C. W. Morse was in Europe and that he would have obtained a proxy from Jennie R. Morse if he had thought it necessary so to do.

The secretary then presented a copy of the call for the meeting together with proof of the giving of notice thereof by mail, in accordance with the by-laws of the corporation, to the stockholders of record whose addresses appeared upon its books, and of personal service, in accordance with the by-laws, upon the stockholders whose addresses did not appear upon the books of the corporation.

The first business of the meeting was the presentation and reading of a report of the treasurer dated May 31, 1916.

Upon motion duly made and seconded it was unanimously resolved—

That the report of the treasurer is accepted and approved and ordered on file.

The treasurer then made a full oral statement to the meeting of the affairs and condition of the company covering the period from the fall

of 1910 to the present time. He explained that the five year contract with the Pacific Navigation Company, under which the company's steamships Yale and Harvard were formerly operated on the Pacific Coast, had expired on December 16, 1915; that the Pacific Navigation Company had been unwilling to renew the contract on any basis that was satisfactory to the Metropolitan Steamship Company; that since then the boats had been operated by the Pacific Navigation Company on a month to month basis for the account of the Metropolitan Steamship Company, the Pacific Navigation Company receiving for its service and for furnishing facilities 11% of the gross receipts; that the operation of the boats on this basis had not been satisfactory to the Metropolitan Steamship Company, and that it seemed to its directors in the best interests of the company that an arrangement if possible should be made by which the operators of the boats should assume all the risks thereof and the Metropolitan Steamship Company should be certain of receiving therefrom at least sufficient income to pay its expenses and fixed charges; that when the meeting was called the directors had expected to have some definite proposition either from the Pacific Company or the Pacific Navigation Company for the operation of the steamships, but that the negotiations toward this end had not sufficiently matured so as to make this possible. The treasurer also stated that the directors would be glad to receive suggestions as to the best arrangement to be made for the operation of these steamships from any of the stockholders, whether present or not, and to give them full consideration. Mr. Fernald thereupon said that he had nothing to sug-

gest and did not know of any plan which would be of advantage to the company and that he had no objection to offer to what was being done. The treasurer then stated further that the above mentioned negotiations were being continued with the hope of obtaining a definite proposition for the operation of the steamships upon terms which would be favorable to the company and that at the proper time he intended to move for an adjournment of the meeting until July 11th at 11 o'clock in order that the stockholders before final action by the company might consider and pass on any proposition that might be made or plan that might be developed.

The following resolution was thereupon offered:

Resolved that all the acts and doings of the directors and officers of this company, since March 6th, 1910, not heretofore validly approved by the stockholders, are hereby approved, ratified and confirmed.

The corporate records showing the acts of the directors during the period set forth in the foregoing resolution were at the meeting open to inspection by any interested stockholders.

The foregoing resolution was then adopted, George A. Fernald alone voting in the negative, and filing a written protest which was placed on file.

Thereupon, upon motion duly made and seconded, the meeting was unanimously adjourned until Tuesday, July 11th, at 11 o'clock, A. M., at the same place.

Attest:

WARREN D. CHASE
*Secretary of the meeting.*

*Exhibit D. 32*—Minutes July 11 & 19, 1916.

*Adjourned Special Meeting, July 11, 1916.*

An adjourned special meeting of the stockholders of the METROPOLITAN STEAMSHIP COMPANY was held at the principal office of the company, No. 15 Exchange Place, Jersey City, New Jersey, on Tuesday, July 11, 1916 at 11 o'clock in the forenoon, pursuant to the adjournment of June 12th, 1916.

There were present or represented 14,371 shares of the company's stock, constituting more than a majority thereof.

A quorum being declared present, Mr. Chase, the Treasurer of the company, reported that the plans which had been discussed at the meeting on June 12, 1916, for the further operation of the steamships "YALE" and "HARVARD" had not been consummated, but that it was hoped that within a week the Directors would have some definite proposition on this subject to lay before the stockholders.

Upon motion, it was then unanimously

RESOLVED to further adjourn the meeting until Wednesday, July 19, 1916, at 11 o'clock in the forenoon at the same place.

Adjourned as above voted.

Attest:

WARREN D. CHASE
*Secretary.*

*Adjourned Special Meeting, July 19, 1916.*

An adjourned special meeting of the stockholders of the METROPOLITAN STEAMSHIP COMPANY was held at the principal office of the company, No. 15 Exchange Place, Jersey City, Hudson County, New Jersey on Wednesday, July 19th 1916, at eleven o'clock in the fore-

noon, pursuant to the adjournment of July 11th, 1916.

There were present or represented 14,371 shares of the company's stock, constituting more than a majority thereof.

A quorum being declared present, Mr. Chase, the Treasurer of the company, reported that the plans which had been discussed at the meeting on June 12th, 1916, for the further operation of the steamships "YALE" and "HARVARD" had not been consummated, but that it was hoped that within two weeks the Directors would have some definite proposition on this subject to lay before the stockholders.

Upon motion, it was then unanimously

RESOLVED to further adjourn the meeting until Thursday, August 3rd, 1916, at eleven o'clock in the forenoon, at the same place.

Adjourned as above voted.

Attest:

WARREN D. CHASE
*Secretary.*

*Adjourned Special Meeting, August 3, 1916.*

An adjourned special meeting of the stockholders of the METROPOLITAN STEAMSHIP COMPANY, held at the principal office of the Company, No. 15 Exchange Place, Jersey City, Hudson County, New Jersey, on Thursday, August 3rd, 1916, at eleven o'clock in the forenoon, pursuant to the adjournment of July 19th, 1916.

There were present or represented 14,371 shares of the company's stock, constituting more than a majority thereof.

*Exhibit D. 32*—Minutes Aug. 8, 1916.

A quorum being declared present, Mr. Chase, the Treasurer of the Company, reported that the plans which had been discussed at the meeting on June 12th, 1916, for the further operation of the steamships "YALE" and "HARVARD" had not been consummated, but it was hoped within a few days the Directors would have some definite proposition on this subject to lay before the stockholders.

Upon motion it was unanimously

RESOLVED to further adjourn the meeting until Tuesday, August 8th, 1916, at two o'clock in the afternoon at the same place.

Adjourned as above voted.

Attest:

WARREN D. CHASE,
*Secretary.*

*Adjourned Special Meeting, Aug. 8, 1916.*

An adjourned special meeting of the stockholders of METROPOLITAN STEAMSHIP COMPANY was held at the principal office of the Company, No. 15 Exchange Place, Jersey City, Hudson County, New Jersey, on Tuesday, August 8th, 1916, at 2 o'clock P. M., pursuant to the adjournment of August 3rd, 1916.

The secretary presented an alphabetical list of the stockholders entitled to vote at the meeting and called the roll for the same. The following stockholders were present in person:

| | |
|---|---|
| Warren D. Chase | 1 share |
| H. R. von Wessely | 1 share |

The Chilmark Company was represented by Warren D. Chase who held its proxy for 14,370

shares. The Chairman announced that a quorum was present and represented.

The Treasurer, Mr. Chase, reported that in pursuance of the policy adopted by the stockholders by vote at their meeting of June 12th, 1916, every effort was made to secure a contract, such as was contemplated by said vote, from the Pacific Navigation Company, which operated the "YALE" and "HARVARD," on the Pacific Coast under the former five year contract, but without success. Thereupon, negotiations were begun with the Pacific Alaska Navigation Company, a Corporation of Maine, well established on the Pacific Coast, and successfully operating the so-called "ADMIRAL" Line of ships between San Francisco on the south and Puget Sound and Alaskan Points on the north. These negotiations were somewhat prolonged, but have finally resulted in the proposed contract to be submitted to this meeting.

The Treasurer further reported that the directors of the company regard the contract as advantageous to the company, and have directed its execution and delivery by the Executive Officers of the Company, provided it is approved by a vote of stockholders holding at least two-thirds of the capital stock of this company.

The proposed contract was then submitted to the meeting reading as follows:

> (Then follows Operating Agreement between Metropolitan Steamship Company and Pacific-Alaska Navigation Company, dated July 31, 1916, in evidence as.....)

Upon motion duly made and seconded, it was unanimously

RESOLVED, that the stockholders of the Company hereby approve of and authorize the

*Exhibit D. 32*—Minutes Nov. 17, 1916.

execution and delivery by the proper officers of this Company, of the proposed contract submitted to this meeting, between it and the Pacific Alaska Navigation Company, for the operation of the Company's steamships "YALE" and "HARVARD" on the Pacific Coast for the period from September 1, 1916 to December 31, 1921, with the option on the part of the Pacific Alaska Navigation Company to extend such contract for the further period of five years.

The minutes of the original session of this meeting held on June 12, 1916 were read and duly approved and ratified as read.

Adjourned without date.

Attest:

WARREN D. CHASE,
*Secretary.*

*Meeting, Nov. 17, 1916.*

The Annual Meeting of Stockholders was held at the office of the Company, No. 15 Exchange Place, Jersey City, N. J., on the 17th day of November 1916, at 2 P. M.

The meeting was called to order by Mr. Warren D. Chase, who, upon motion, duly made, seconded and carried, was chosen Chairman, and Mr. Douglas Nicholson was appointed Secretary of the meeting.

The Secretary presented the alphabetical list, required by statute, of the stockholders entitled to vote at this meeting, and reported that the following stockholders were present in person:

| Names | No. of Shares. |
|---|---|
| Warren D. Chase | 6 |

*Exhibit D. 32*—Minutes Nov. 17, 1916.

and that the following stockholders were represented by proxy:

| Names | Names of Proxies | No. of Shares. |
|---|---|---|
| The Chilmark Company | Douglas Nicholson | 14,370 |

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxies presented were ordered to be filed with the Secretary of the meeting.

The Secretary presented and read a copy of the notice of the meeting, together with proof of the due publication thereof, as required by the by-laws.

The transfer book and the stock book of the Company were produced and remained during the meeting open to inspection.

Upon motion, duly made, seconded and carried, the minutes of the stockholders' meeting held respectively on November 18th, 1910; November 17th, 1911; November 15th, 1912; November 21st, 1913; November 20th, 1914; November 19th, 1915; June 12, 1916; July 11th, 1916; July 19th, 1916; August 3rd, 1916 and August 8th 1916, were read and duly approved and ratified as read.

Upon motion duly made, seconded and carried, it was

VOTED that all the actions of the directors and officers of the Company since the last annual meeting of the stockholders, held on the 19th day of November, 1915 are hereby ratified, approved and confirmed.

Messrs. C. H. Jarvis and P. L. Nieser (neither of them being a candidate for the office of di-

rector) were appointed inspectors of election and duly sworn.

The meeting then proceeded to the election of directors, by ballot, in accordance with the by-laws, and the polls were opened at 2.15 P. M., and the stockholders prepared their ballots and delivered them to the inspectors.

The polls having remained open for the period prescribed by statute, were ordered closed and the inspectors presented their report in writing, showing that the following persons, stockholders of the Company, had received the greatest number of votes:

| | |
|---|---|
| Warren D. Chase | 14,376 votes |
| Hugo R. von Wessely | 14,376 " |
| Louis W. Chism | 14,376 " |

The chairman thereupon declared that the above named persons were duly elected directors of the Company.

Upon motion, duly made, seconded and carried, the Secretary was directed to file with the records of the Company, for the purpose of reference, the following papers:

(1) List of stockholders entitled to vote at this meeting.

(3) Proxies presented at the meeting.

(3) Notice of meeting and proof of publication thereof.

(4) Inspectors' Oath and Report.

No further business coming before the meeting, upon motion, duly made, seconded and carried, the same adjourned.

DOUGLAS NICHOLSON,
*Secretary of the Meeting.*

# METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY

## Recapitulation of Income, Deductions from Income and Net Income *or Deficit*

## Showing Totals and Average Results per Day

## From November 15, 1909 (Date of Organization), to December 31, 1916

| | Total From Time of Organization to Date | Atlantic Coast Operation | | | In Transit to Pacific Coast | Pacific Coast Operation | | | | Total in Transit & Pac. Coast Operation |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Prior to March 5, 1910 | After March 5, 1910 | Total to Oct.10/10 | | Contract Pacific Navig. Co. | Opr. for Account of M. S. S. Co. | Contract Pac. Alaska Navig. Co. | Total Since Arriv'l on Pac. Coast | |
| | Nov.15/09 to Dec.31/16 | Nov.15/09 to Mch. 5/10 | Mch. 6/10 to Oct.10/10 | Nov.15/09 to Oct.10/10 | Oct.11/10 to Dec.15/10 | Dec.16/10 to Dec.15/15 | Dec.16/15 to Aug.31/16 | Sep. 1/16 to Dec.31/16 | Dec.16/10 to Dec.31/16 | Oct.11/10 to Dec.31/16 |
| | 2603 Days | 110 Days | 219 Days | 329 Days | 66 Days | 1826 Days | 260 Days | 122 Days | 2208 Days | 2274 Days |
| erating Income | 2,270,877.13 | 11,389.55 | 84,392.86 | 95,782.41 | | 1,926,000.64 | 130,094.08 | 120,000.00 | 2,175,094.72 | 2,175,094.72 |
| Less Expenses, Insurance and Taxes | 735,193.21 | 48,302.94 | 57,389.72 | 105,692.66 | 23,928.83 | 501,229.03 | 73,299.04 | 31,043.65 | 605,571.72 | 629,500.55 |
| from Operation | 1,535,683.92 | 36,913.39 | 27,003.14 | | | | | | | |
| t Income or Loss | | | | 9,910.25 | 23,928.83 | 1,423,771.61 | 56,795.04 | 88,956.35 | 1,569,523.00 | 1,545,594.17 |
| her Income | 31,924.73 | 31,924.73 | | 31,924.73 | | | | | | |
| Total Income or Loss | 1,567,608.65 | 4,988.66 | 27,003.14 | 22,014.48 | 23,928.83 | 1,423,771.61 | 56,795.04 | 88,956.35 | 1,569,523.00 | 1,545,594.17 |
| ss Deductions from Income: | | | | | | | | | | |
| Interest and Discount (Net) | 740,243.38 | 46,318.89 | 80,903.47 | 127,222.36 | 26,015.84 | 504,362.05 | 68,330.47 | 14,312.66 | 587,005.18 | 613,021.02 |
| Cost of delivering Ships on Pacific Coast | 138,314.07 | | | | | 138,314.07 | | | 138,314.07 | 138,314.07 |
| Uncollectable Accounts charged off | 3,682.95 | | 3,142.95 | 3,142.95 | | 540.00 | | | 540.00 | 540.00 |
| Judgment—U. F. Co. | 7,632.24 | | 7,632.24 | 7,632.24 | | | | | | |
| Total Deductions from Income | 889,872.64 | 46,318.89 | 91,678.66 | 137,997.55 | 26,015.84 | 643,216.12 | 68,330.47 | 14,312.66 | 725,859.25 | 751,875.09 |
| lance NET INCOME OR DEFICIT | 677,736.01 | 51,307.55 | 64,675.52 | 115,983.07 | 49,944.67 | 760,555.49 | 11,535.43 | 74,643.69 | 843,663.75 | 793,719.08 |
| AVERAGE RESULTS PER DAY | | | | | | | | | | |
| erating Income | 872.41 | 103.54 | 385.36 | 291.13 | | 1,054.22 | 500.36 | 983.61 | 985.10 | 956.51 |
| penses, Insurance and Taxes | 282.44 | 439.12 | 262.05 | 321.25 | 362.56 | 274.50 | 281.92 | 254.46 | 274.26 | 276.83 |
| Net Income or Loss from Operation | 589.97 | 335.58 | 123.81 | 30.12 | 362.56 | 779.72 | 218.44 | 729.15 | 710.84 | 679.68 |
| ner Income | 12.26 | 290.23 | | 97.03 | | | | | | |
| Total Income or Loss | 602.23 | 45.35 | 123.31 | 66.91 | 362.56 | 779.72 | 218.44 | 729.15 | 710.84 | 679.68 |
| ductions from Income | 341.86 | 421.08 | 418.62 | 419.44 | 394.17 | 352.25 | 262.81 | 117.32 | 328.74 | 330.64 |
| lance NET INCOME OR DEFICIT | 260.37 | 466.43 | 296.31 | 352.53 | 756.73 | 427.47 | 44.37 | 611.83 | 362.10 | 349.04 |
| ANNUAL AVERAGE (Year of 365 Days) | | | | | | | | | | |
| ome or Loss | 219,813.95 | 16,552.75 | 45,008.15 | 24,422.15 | 132,334.40 | 284,597.80 | 79,730.60 | 266,139.75 | 259,456.60 | 248,083.20 |
| ductions from Income | 124,778.90 | 153,694.20 | 152,796.30 | 153,095.60 | 143,822.05 | 128,571.25 | 95,925.65 | 42,821.80 | 119,990.10 | 120,683.60 |
| NET INCOME OR DEFICIT | 95,035.05 | 170,246.95 | 107,788.15 | 128,673.45 | 276,156.45 | 156,026.55 | 16,195.05 | 223,317.95 | 139,466.50 | 127,399.60 |

Exhibit D. 33.

*Exhibit D. 34.*

# Exhibit D. 34.

## METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY

### Comparative Statement of Financial Condition At November 15, 1909-October 10, 1910 (Before Issue of Second Mortgage Bonds), December 15, 1915, and December 31, 1916

| | Nov. 15, 1909 | Oct. 10, 1910 | Dec. 15, 1915 | Dec. 31, 1916 |
|---|---|---|---|---|
| ASSETS | | | | |
| Current Assets: | | | | |
| Cash | 1,000.00 | 11,077.06 | 179,248.37 | 52,637.58 |
| Accounts Receivable | | 18,063.23 | 37,856.13 | 132,524.92 |
| Stores and Supplies on board ships | | | 8,064.72 | |
| Prepaid Insurance | | 16,576.77 | 29,763.60 | 29,569.88 |
| Prepaid Expenses | | 4,814.63 | | |
| Total Current Assets | 1,000.00 | 50,531.69 | 254,932.82 | 214,732.38 |
| Cost of Property | 6,999,000.00 | 5,486,291.78 | 5,411,291.78 | 5,411,291.78 |
| Additions and Improvements to Equipment | | 11,350.00 | 33,358.33 | 33,358.33 |
| Furniture | | | 150.00 | 150.00 |
| Total Assets | 7,000,000.00 | 5,548,173.47 | 5,699,732.93 | 5,659,532.49 |
| LIABILITIES | | | | |
| Current Liabilities: | | | | |
| Accounts Payable | | 22,563.40 | 18,005.22 | 36,729.85 |
| Current Notes Payable | | | | 30,000.00 |
| Traffic Accounts | | | | 19,549.72 |
| Pacific Alaska Nav. Co. Prepaid Rental | | | | 30,000.00 |
| Accrued Taxes | | 416.67 | 4,701.51 | 1,229.55 |
| Accrued Interest | | 58,378.50 | 42,106.67 | 12,995.58 |
| Total Current Liabilities | | 81,358.57 | 64,813.40 | 130,504.70 |
| Notes Payable | | | | |
| Two year 6% notes due 11/15/11 | 500,000.00 | 500,000.00 | | |
| Ten year notes due 11/15/19 | 1,500,000.00 | 1,427,291.78 | 1,427,291.78 | 1,427,291.78 |
| Notes due 12/15/11 & 9/24/12 | | 60,000.00 | 60,000.00 | 60,000.00 |
| Demand Note to Assets Realiz) Company | | 95,506.19 | | |
| First Mortgage 5% Bonds (Net) | 3,000,000.00 | 2,000,000.00 | 1,662,000.00 | 1,578,000.00 |
| Second Mortgage 6% Bonds | | | 371,000.00 | 286,000.00 |
| Mortgage on Union Wharf | 500,000.00 | | | |
| Capital Stock | 1,500,000.00 | 1,500,000.00 | 1,500,000.00 | 1,500,000.00 |
| Total Liabilities | 7,000,000.00 | 5,664,156.54 | 5,085,105.18 | 4,981,796.48 |
| Profit and Loss—Surplus or Deficit) | | 115,983.07 | 614,627.75 | 677,736.01 |
| Total | 7,000,000.00 | 5,548,173.47 | 5,699,732.93 | 5,659,532.49 |

*Exhibit D. 34.*

## METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY

### Balance Sheet Showing Assets and Liabilities at November 15, 1909

ASSETS

| | | |
|---|---|---|
| Cost of Property | | 6,999,000.00 |
| Cash | | 1,000.00 |
| Total Assets | | 7,000,000.00 |

LIABILITIES

| | | |
|---|---|---|
| Capital Stock | | 1,500,000.00 |
| First Mortgage 5% Bonds | | 3,000,000.00 |
| Mortgage on Union Wharf | | 500,000.00 |
| Notes Payable— | | |
| Dated Nov. 15, 1909, due Nov. 15, 1911 | 500,000.00 | |
| Dated Nov. 15, 1909, due Nov. 15, 1919 | 1,500,000.00 | 2,000,000.00 |
| Total Liabilities | | 7,000,000.00 |

## METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY

### Balance Sheet Showing Assets and Liabilities Exclusive of Second Mortgage Bonds and Proceeds of Same October 10, 1910

ASSETS

| | | | |
|---|---|---|---|
| Cost of Property | | | 5,486,291.78 |
| Additions and Improvements to Equipment | | | 11,350.00 |
| Current Assets | | | |
| Cash | | 11,077.06 | |
| Accounts Receivable | | 10,135.49 | |
| Insurance Claims | | 7,927.74 | |
| Prepaid Expenses | | 4,814.63 | |
| Prepaid Insurance | | 16,576.77 | |
| Total Current Assets | | | 50,531.69 |
| Total Assets | | | 5,548,173.47 |
| Profit and Loss—Deficit | | | 115,983.07 |
| Total Assets and Deficit | | | 5,664,156.54 |

LIABILITIES

| | | | |
|---|---|---|---|
| Capital Stock | | | 1,500,000.00 |
| First Mortgage Bonds | | | 2,000,000.00 |
| Notes Payable— | | | |
| Dated Nov. 15, 1909, due Nov. 15, 1911 | | 500,000.00 | |
| Dated Nov. 15, 1909, due Nov. 15, 1919 | | 1,427,291.78 | |
| Dated Feb. 5, 1910, due Dec. 15, 1911 | | 30,000.00 | |
| Dated Feb. 5, 1910, due Sept. 24, 1912 | | 30,000.00 | |
| Demand Note to Assets Realization Company | | 95,506.19 | |
| Total Notes Payable | | | 2,082,797.97 |
| Current Liabilities: | | | |
| Accounts Payable | | 22,563.40 | |
| Accrued Taxes | | 416.67 | |
| Accrued Interest | | | |
| On Notes due Nov. 15, 1911 | 27,162.51 | | |
| On Demand Notes | 3,438.22 | | |
| On First Mortgage Bonds | 27,777.77 | 58,378.50 | |
| Total Current Liabilities | | | 81,358.57 |
| Total Liabilities | | | 5,664,156.54 |

*Exhibit D. 34.*

# METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY

## Balance Sheet Showing Assets and Liabilities

## December 15, 1915

| | | | |
|---|---|---|---|
| **ASSETS** | | | |
| Cost of Property (at book value) | | | 5,411,291.78 |
| Additions and Improvements to Equipment | | | 33,358.33 |
| Furniture | | | 150.00 |
| Current Assets: | | | |
| Cash | | 179,248.37 | |
| Accounts Receivable | | 37,856.13 | |
| Prepaid Insurance | | 29,763.60 | |
| Stores, supplies, etc. on board ships | | 8,064.72 | |
| Total Current Assets | | | 254,932.82 |
| Total Assets | | | 5,699,732.93 |
| **LIABILITIES** | | | |
| Capital Stock | | | 1,500,000.00 |
| First Mortgage Bonds | | 2,000,000.00 | |
| Less Bonds in Sinking Fund | | 338,000.00 | 1,662,000.00 |
| Second Mortgage Bonds | | | 371,000.00 |
| Notes Payable | | | |
| Due Dec. 15, 1911 | | 30,000.00 | |
| Due Sept. 24, 1912 | | 30,000.00 | |
| Due Nov. 15, 1919 | | 1,427,291.78 | 1,487,291.78 |
| Current Liabilities: | | | |
| Accounts Payable | | 18,005.22 | |
| Accrued Taxes | | 4,701.51 | |
| Accrued Interest | | | |
| On First Mortgage Bonds | 38,087.50 | | |
| On Second Mortgage Bonds | 4,019.17 | 42,106.67 | |
| Total Current Liabilities | | | 64,813.40 |
| Total Liabilities | | | 5,085,105.18 |
| Profit and Loss—Surplus | | | 614,627.75 |
| Total Liabilities and Surplus | | | 5,699,732.93 |

*Exhibit D. 34.*

# METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY

## Balance Sheet Showing Assets and Liabilities
## December 31, 1916

| | | | |
|---|---|---|---|
| **ASSETS** | | | |
| Cost of Property (at book value) | | | 5,411,291.78 |
| Additions and Improvements to Equipment | | | 33,358.33 |
| Furniture | | | 150.00 |
| Current Assets: | | | |
| Cash | | 52,637.58 | |
| Accounts Receivable | | 132,524.92 | |
| Prepaid Insurance | | 29,569.88 | |
| Total Current Assets | | | 214,732.38 |
| Total Assets | | | 5,659,532.49 |
| **LIABILITIES** | | | |
| Capital Stock | | | 1,500,000.00 |
| First Mortgage Bonds | | 2,000,000.00 | |
| Less Bonds in Sinking Fund | | 422,000.00 | 1,578,000.00 |
| Second Mortgage Bonds (original issue $750,000.) | | | 286,000.00 |
| Notes Payable | | | |
| Due Dec. 15, 1911 | | 30,000.00 | |
| Due Sept. 24, 1912 | | 30,000.00 | |
| Due Nov. 15, 1919 | | 1,427,291.78 | 1,487,291.78 |
| Current Liabilities: | | | |
| Accounts Payable | | 36,729.85 | |
| Current Notes Payable (due Jan. 12, 1917) | | 30,000.00 | |
| Traffic Liabilities (outstanding Ticket and Freight Accounts) | | 19,549.72 | |
| Pacific Alaska Nav. Co. (Prepaid Rental) | | 30,000.00 | |
| Accrued Taxes | | 1,229.55 | |
| Accrued Interest | | | |
| On Second Mortgage Bonds | 12,393.34 | | |
| On Sundry Accounts | 602.24 | 12,995.58 | |
| Total Current Liabilities | | | 130,504.70 |
| Total Liabilities | | | 4,981,796.48 |
| Profit and Loss—Surplus | | | 677,736.01 |
| Total Liabilities and Surplus | | | 5,659,532.49 |

*Exhibit D. 35.*

# Exhibit D. 35.

## METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY

### Statement of Net Liabilities (Except Capital Stock) Representing Investment in Steamships

November 15, 1909
November 15, 1909---After Eliminating Liabilities Retired by Sale of
October 10, 1910---Property Before Issue of Second Mortgage Bonds
December 15, 1915
December 31, 1916

| | Nov. 15 1909 Date of Organization | Nov. 15, 1909 Eliminating Liabilities Retired by Sale of Property Mch 5, 1910 | Oct. 10, 1910 Before Issue of Second Mortgage Bonds | Dec. 15, 1915 | Dec. 31, 1916 |
|---|---|---|---|---|---|
| Current Liabilities: | | | | | |
| Accounts Payable | | | 22,563.40 | 18,005.22 | 36,729.85 |
| Current Notes Payable | | | | | 30,000.00 |
| Traffic Accounts | | | | | 19,549.72 |
| Pacific Alaska Nav. Co. (Prepaid Rentals) | | | | | 30,000.00 |
| Accrued Taxes | | | 416.67 | 4,701.51 | 1,229.55 |
| Accrued Interest | | | 58,378.50 | 42,106.67 | 12,995.58 |
| Total Current Liabilities | | | 81,358.57 | 64,813.40 | 130,504.70 |
| Notes Payable | | | | | |
| Two year 6% Notes due Nov. 15, 1911 | 500,000.00 | 500,000.00 | 500,000.00 | | |
| Ten year Notes due Nov. 15, 1919 | 1,500,000.00 | 1,427,291.78 | 1,427,291.78 | 1,427,291.78 | 1,427,291.78 |
| Notes due Dec. 15, 1911 and Sept. 24, 1912 | | 60,000.00 | 60,000.00 | 60,000.00 | 60,000.00 |
| Demand Notes to Assets Realiz. Co. | | | 95,506.19 | | |
| First Mortgage 5% Bonds—Net | 3,000,000.00 | 2,000,000.00 | 2,000,000.00 | 1,662,000.00 | 1,578,000.00 |
| Second Mortgage 6% Bonds | | | | 371,000.00 | 286,000.00 |
| Mortgage on Union Wharf | 500,000.00 | | | | |
| Total (Exclusive of Capital Stock) | 5,500,000.00 | 3,987,291.78 | 4,164,156.54 | 3,585,105.18 | 3,481,796.48 |
| Less Assets: | | | | | |
| Cash | 1,000.00 | 1,000.00 | 11,077.06 | 179,248.37 | 52,637.58 |
| Accounts Receivable | | | 18,063.23 | 37,856.13 | 132,524.92 |
| Stores and Supplies on Ships | | | | 8,064.72 | |
| Prepaid Insurance | | | 16,576.77 | 29,763.60 | 29,569.88 |
| Total Current Assets | 1,000.00 | 1,000.00 | 50,531.69 | 254,932.82 | 214,732.38 |
| Additions and Improvements to Equipment | | | 11,350.00 | 33,358.33 | 33,358.33 |
| Furniture | | | | 150.00 | 150.00 |
| Total Assets Except Ships | 1,000.00 | 1,000.00 | 61,881.69 | 288,441.15 | 248,240.71 |
| BALANCE—Liabilities in Excess of Assets OTHER than Ships | 5,499,000.00 | 3,986,291.78 | 4,102,274.85 | 3,296,664.03 | 3,283,555.77 |

*Exhibit D. 36.*

## Exhibit D. 36.

NOTICE OF SPECIAL MEETING OF THE STOCKHOLDERS OF METROPOLITAN STEAMSHIP COMPANY.

Notice is hereby given that a special stockholders' meeting of METROPOLITAN STEAMSHIP COMPANY, organized and existing under the laws of the State of New Jersey, will be held at the principal office of the company at 15 Exchange Place, Jersey City, New Jersey, on the 12th day of June, 1916, at 3 o'clock P. M., for the following purposes, to wit:—

To hear and act upon the report of the Treasurer of the company concerning its earnings and its financial condition; also to consider and act upon such plan or plans as may be presented by any stockholders at the meeting for the utilization of the steamships "Yale" and "Harvard" to the best advantage of the company; also to consider and act upon the approval of a corporate policy to obtain if possible such a contract for the operation of said steamships by The Pacific Company or by some party as shall secure both the proper maintenance of said ships and a certainty of the financial ability of this company to meet during the life of any such contract all its necessary expenses and fixed charges; and to approve any or all past actions of the directors and officers of the company.

Dated at Hartford, Connecticut, this 1st day of June, 1916.

By direction of the President.

WARREN D. CHASE,
*Secretary.*

*Exhibit D. 37.*

## Exhibit D. 37.

Letter, G. W. Apsey, to American Trust Company, and schedules, February 23, 1910.

Boston, Mass., February 23, 1910.

American Trust Company,
53 State Street,
Boston, Mass.

Gentlemen:—

Referring to your request for figures as to the earnings of the freight steamers of the Metropolitan Steamship Company during the last four years, I enclose herewith statements for the years, 1906, 1907, 1908 and 1909, which I have marked Exhibits "A," "B," "C" and "D." The figures contained therein are taken from the books of the Steamship company. In no instance, during these years, has any bond interest been charged up in these expenses.

Referring to the figures for 1908 and 1909, if the "Harvard" and "Yale" had not been run in 1908 and 1909, the expenses would have been larger by about $25,000 per year as this proportion of the wharfage and clerical help was charged against the "Harvard" and "Yale."

Referring to the statement for the year 1907, the September, October and November expenses are possibly large. That is to say, on account of the "Harvard" and "Yale" being put into commission in a great hurry, the freight business was discommoded to such an extent that it increased the ordinary freight expenses, particularly the labor.

Very truly yours,

(S) G. W. APSEY.

*Exhibit D. 37.*

## 1906.

| | Receipts. | Expenses. | Tons. | Profit. | Loss. |
|---|---|---|---|---|---|
| Jany. | 81,017.12 | 72,002.52 | 40,425. | 9,014.60 | |
| Feby. | 69,412.14 | 61,994.00 | 33,615. | 7,418.14 | |
| Mar. | 72,491.51 | 69,269.53 | 36,051. | 3,221.98 | |
| Apr. | 74,729.95 | 64,095.70 | 34,964. | 10,634.25 | |
| May | 81,033.28 | 65,402.09 | 38,485. | 15,631.19 | |
| June | 69,916.98 | 64,174.51 | 33,860. | 5,742.41 | |
| July | 70,660.71 | 68,028.24 | 31,687. | 2,632.47 | |
| Aug. | 71,975.70 | 69,942.65 | 33,483. | 2,033.05 | |
| Sept. | 64,084.17 | 66,935.73 | 32,259. | | 2,851.56 |
| Oct. | 85,862.96 | 78,367.92 | 42,272. | 7,494.94 | |
| Nov. | 82,436.27 | 82,362.03 | 42,004. | 74.24 | |
| Dec. | 84,716.46 | 76,986.90 | 42,265. | 7,729.56 | |
| | 908,337.25 | 839,561.82 | 441,370. | 71,626.83 | |
| | | | | 2,851.56 | |
| | | | | 68,775.27 | |
| | | | Less Repairs | 7,728.53 | |
| | | | Profit | 61,046.74 | |

## 1917.

| | Receipts. | Expenses. | | |
|---|---|---|---|---|
| Jany. | 81,091.62 | 84,828.73 | | |
| Feby. | 67,095.45 | 76,799.35 | | |
| Mar. | 77,666.85 | 84,651.05 | | |
| Apr. | 86,770.02 | 80,246.18 | | |
| May | 89,314.57 | 83,855.93 | | |
| June | 80,936.63 | 77,635.45 | | |
| July | 77,424.88 | 74,621.93 | | |
| Aug. | 86,041.65 | 67,035.76 | | |
| Sept. | 62,775.43 | 75,248.47 | Tons. | |
| Oct. | 50,643.24 | 105,435.10 | 418,539 | |
| Nov. | 65,687.56 | 106,525.19 | | |
| Dec. | 55,594.85 | 69,892.32 | | |
| | 881,042.75 | 986,775.46 | | |
| | | 881,042,75 | | |
| | | 105,732.71 | | |
| | | 56,169.97 | Repairs | |
| | | 161,902.68 | | |
| | | 12,000. | Less Labor on ft. on H. & Y. | |
| | | 149,902.68 | LOSS | |

*Exhibit D. 37.*

METROPOLITAN STEAMSHIP COMPANY

Freight Steamers

1908

| | |
|---|---|
| Running Expense | 135,767.55 |
| Lay Up " | 15,239.61 |
| Dock Labor | 157,799.17 |
| Lighter Expense | 18,135.43 |
| Rents and Taxes | 70,031.51 |
| Office Expense and Salaries | 119,726.20 |
| Wharf Expense | 17,422.31 |
| Cargo Insurance | 25,310.52 |
| Repairs | 11,803.57 |
| Loss and Damage | 2,251.89 |
| Expense | 573,487.76 |
| Receipts | 496,600.94 |
| Debit Balance | 76,886.82 |

METROPOLITAN STEAMSHIP COMPANY

Freight Steamers

1909

| | |
|---|---|
| Running Expense | 150,234.82 |
| Lay Up " | 14,677.18 |
| Dock Labor | 190,986.57 |
| Lighter Expense | 25,868.11 |
| Rents and Taxes | 70,287.57 |
| Office Expense and Salaries | 119,003.47 |
| Wharf Expense | 15,544.07 |
| Cargo Insurance | 24,547.39 |
| Repairs | 27,483.75 |
| Accidents and Collisions | 335.97 |
| Loss and Damage | 16,398.95 |
| Total Expense | 655,367.85 |
| Receipts | 568,183.85 |
| Debit Balance | 87,184.00 |

*Exhibit D. 38.*

## Exhibit D. 38.

Operating agreement between Metropolitan Steamship Co. of N. J. and Pacific Alaska Navigation Company, dated July 31, 1916.

THIS INDENTURE, dated the 31st day of July, One thousand nine hundred and sixteen, by and between METROPOLITAN STEAMSHIP COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, hereinafter termed Steamship Company, and PACIFIC ALASKA NAVIGATION COMPANY, a corporation duly organized and existing under the laws of the State of Maine, hereinafter termed Navigation Company;

WHEREAS, Steamship Company is the owner of the Steamships "Yale" and "Harvard" of the Port of New York, in the State of New York, which steamships are now being operated on the Pacific Coast between the ports of San Francisco, Los Angeles and San Diego; and

WHEREAS, Navigation Company has proposed to Steamship Company to act for Steamship Company in operating said steamships on said Pacific Coast in connection with its own steamships voyaging on regular schedules from San Francisco to Pacific Coast ports toward the North, and as an inducement to Steamship Company has offered to guarantee to Steamship Company a fixed and absolute minimum net return from such operation, as well as a share in any net profits from such operation in excess of said minimum amount, and has offered to protect Steamship Company in other ways hereinafter set forth.

*Exhibit D. 38.*

Now therefore it is mutually covenanted and agreed by and between the parties hereto that for the term commencing September 1st, 1916, and ending December 31st, 1921, and for any extension of said term that may be made hereafter, Navigation Company is hereby employed to operate each of said steamships and to conduct a transportation business by means of said steamships, as sole agent of Steamship Company, upon the terms and subject to the covenants, agreements and conditions hereinafter set forth, between the ports of San Francisco, San Pedro and San Diego, and also between any of said ports and such other ports on the Pacific Coast, not south of San Diego nor north of Vancouver, British Columbia, as may be from time to time agreed upon in writing between the parties hereto.

1. Navigation Company covenants and agrees to man, victual and navigate both of said steamships by its own procurement and at its own expense.

2. Navigation Company guarantees to Steamship Company that the absolute net income of Steamship Company under this indenture, without deductions of any sort, shall be at least thirty thousand dollars ($30,000.) per calendar month during the whole of said term, including any extension thereof; and as partial security to Steamship Company for the performance of this guarantee, Navigation Company does hereby covenant and agree to pay to Steamship Company thirty thousand dollars ($30,000.) in advance at the beginning of each calendar month during the said term. Payments of said amounts are to be made to such person or corporation,

*Exhibit D. 38.*

and at such place in the City of New York, New York, as from time to time shall be designated in writing by Steamship Company to Navigation Company. If either of said steamships shall be totally lost, thereafter the payments due under this paragraph shall be reduced on that account by the sum of fifteen thousand dollars ($15,000.) per calendar month. If either of said ships shall without fault of the Navigation Company suffer such a disaster that such ship cannot by the exercise of the utmost diligence be repaired within eight months so as to be again fit for service, but such ship shall be, as a necessary consequence of such disaster, continuously out of service for more than eight months, all payments due under this paragraph after such period of eight continuous months shall be on that account reduced by the sum of fifteen thousand dollars ($15,000.) per calendar month until said ship is again ready for service.

3. The net profits in each calendar year from the operation of said steamships in excess of the amounts paid by Navigation Company to Steamship Company in such calendar year in accordance with the preceding paragraph, shall be equally divided between the parties hereto. In determining the amount of these net profits for each calendar year during said term Navigation Company shall charge against the gross income resulting from the operation of said ships and the conduct of said business of transportation (including sums of money receivable, as well as actual receipts, and all other assets created during such year by said business) a sum of money amounting to ten per cent (10%) of the gross earnings of said ships for that year. Except as hereinafter otherwise specifically provided,

*Exhibit D. 38.*

Navigation Company in consideration of said allowance to it of ten per cent (10%) of gross earnings shall pay out of its own treasury and without allowance therefor as a charge against gross income in ascertaining net profits hereunder, all overhead expenses, and all expenses for things done or for facilities provided on shore, including all expenses for proper printing and advertising, the maintenance of necessary dock force at the several ports, consisting of dock clerks, billing clerks, baggage men, watchmen, etc., the employment of passenger and freight solicitors and traveling agents, the keeping of all necessary accounts and the auditing thereof, the superintendence of the maintenance and repairs of the said ships, the furnishing of all proper shore stationery of all kinds, and the general administration of the said business. In addition to said ten per cent (10%) of the gross earnings of the calendar year there shall also be charged as expenses of the business conducted by means of said ships against the gross income therefrom the following expenses, if actually and directly incurred in said business during said year, to wit:

The proper actual direct cost on said ships of the maintenance and operation thereof; the proper actual cost to Navigation Company (if not covered by then existing insurance policies) directly resulting from injuries to persons or property caused during such calendar year by or in the course of the operation of either of said ships; the proper actual direct labor cost of loading and discharging freight and baggage, loading stores and running lines to assist in the dockage of the ships, the proper actual charges for tug boats assisting in docking the ships, and

*Exhibit D. 38.*

the proper actual dockage charges for said ships, which charges shall not include any payment for special wharf privileges over and above regular daily dockage rates.

The balance of said gross income in each calendar year, over the amounts charged as aforesaid against said income, shall for the purposes of this indenture, constitute the net profits of the calendar year; and a sum of money equal to one-half of the excess of such net profits thus ascertained over and above the amounts paid by Navigation Company to Steamship Company under paragraph 2 shall, on or before the fifteenth of February in the following calendar year, be paid by Navigation Company to Steamship Company at such place in the City of New York as from time to time shall be designated in writing by Steamship Company.

4. Navigation Company covenants, agrees and guarantees that it will, at its own expense (chargeable as an expense of maintaining said ships under paragraph 3) except as such expense may be actually covered by then existing policies of insurance, during the whole term of this indenture and any extension thereof, maintain, preserve and keep each of said steamships, the "Yale" and the "Harvard" and all the property of Steamship Company located thereon or appurtenant thereto or used in said business, in thorough working order and repair, and make all needful or proper repairs, renewals, replacements, additions and changes of every nature, upon each of said ships, and make all changes, additions, renewals and repairs upon or about each of said steamships which may be required by any government inspector, or by any inspector appointed by underwriters of said steam-

*Exhibit D. 38.*

ship, and fully comply with all other requirements of such underwriters, and fully comply with all the requirements of the American Bureau of Shipping, in order to maintain the present class-rating now held by said ships. Steamship Company shall have the right, at all times, to thoroughly inspect each of said ships, and every part thereof, through any properly accredited agent. If Steamship Company shall request Navigation Company to do anything of any nature upon said ships under or in pursuance of the terms of this paragraph to which Navigation Company shall not agree, the whole question thus arising between the parties hereto shall be submitted, without further formality, to the conclusive arbitration of the person who shall at the time be Lloyd's agent in the City of San Francisco, or to such expert or experts as he shall appoint for the purpose of determining such question. The determination of said Lloyd's agent or such expert or experts thus obtained, shall be conclusive between the parties hereto, and Navigation Company covenants and agrees forthwith to do anything upon or about said ships under this paragraph which it shall thus be determined ought properly to be done. Navigation Company also covenants and agrees that each of said steamships shall be dry-docked once in the year 1916, and twice in each subsequent calendar year of said term, for the purpose of examination thereof, and of doing such things as shall be proper to be done in fulfilment of the provision of this paragraph. Navigation Company will in each instance give Steamship Company as much notice as is practicable of the date on which either of said ships is expected to go into dry dock.

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5. In consideration of the payments to be made by Navigation Company to Steamship Company as above provided, and of all the expenses, liabilities and obligations assumed or to be incurred by it hereunder, all the gross income from said steamships, except as may be otherwise herein provided, during the whole of said term and any extension thereof shall belong to Navigation Company and Navigation Company shall not be entiled to any claim against or allowance by Steamship Company except as herein otherwise specifically provided.

6. Navigation Company covenants and agrees carefully to keep full, accurate and separate books of account of the business done by means of said steamships, so that the assets and liabilities created by said business and the amounts of gross earnings and income, of expenses chargeable against said income and of net profits divisible between the parties hereto, can readily and accurately be calculated, and to furnish from said accounts thus kept to Steamship Company, on or before the tenth day of February in each year a full and detailed statement (including a balance sheet of such assets and liabilities) showing that the amount of said net profits during the preceding calendar year is as stated by Navigation Company to Steamship Company. Steamship Company shall be permitted by Navigation Company, through persons duly accredited as agents of Steamship company, to examine freely at any time any and all books or papers of Navigation Company relating to or connected with the business done by means of or in connection with said ships, or either of them, for the purpose of ascertaining the cor-

*Exhibit D. 38.*

rectness of the amounts of net profits as stated or either of them, for the purpose of ascertaining the correctness of the amounts of net profits as stated or to be stated by Navigation Company, and the correctness of the methods of accounting used by Navigation Company in ascertaining said amounts.

7. Navigation Company covenants and agrees that during said term it will use the "Yale" and "Harvard" on as many and such voyages between said ports as will offer the best prospects of the largest net profits, from the two steamships regarded as a steamship line, and that under any conditions that may exist during said term it will endeavor, by means of all practicable advantageous arrangements and by the use of every reasonable effort and expenditure, to secure for the "Yale" and "Harvard" on each of their respective voyages as large a number of passengers and as much profitable freight as is possible, and to make the net profits of said ships at all times as large as possible. Unless otherwise hereafter agreed in writing between the parties, all through rates for freight carried either by the "Yale" or "Harvard" and also over part of the through route by any other ship in whose earnings Navigation Company has a pecuniary interest, directly or indirectly, shall be so divided that at least one-half thereof shall be accounted for as part of the gross earnings of the "Yale" and "Harvard;" and all through rates for passengers carried either by the "Yale" or "Harvard" and also over part of the through route by any other ship in whose earnings Navigation Company has any such interest shall be so divided that the amount to be accounted for by Navigation Company as

*Exhibit D. 38.*

part of the gross earnings of said "Yale" and "Harvard" shall not be less than in the ratio of the local rate on the "Yale" or "Harvard" on its part of said through route to the sum of the local rates on said "Yale" and "Harvard" and said other ship over both parts of said through route.

8. Navigation Company covenants and agrees that during said term it will have no pecuniary interest, directly or indirectly, in the earnings of any ship voyaging between the said ports between which the "Yale" and "Harvard" now voyage, except a ship or ships now plying on a regular schedule between such ports, or a similar ship or ships substituted therefor. If at any time during said term Navigation Company shall acquire in any form or degree any pecuniary interest in the earnings of any ship or ships now thus plying on a regular schedule between the ports of San Pedro and San Francisco and, or San Diego, or of any ship or ships of a similar character substituted therefor, Navigation Company covenants and guarantees that such last mentioned now running or substituted ships or ships shall not make a substantially increased number of voyages between said ports, that such voyages shall, as far as is practicable and not disadvantageous to the public be so scheduled that they shall not occur on the same day that either the "Yale" or "Harvard" is scheduled to make the same voyage, and that the voyages between said ports of the "Yale" and "Harvard" shall be so scheduled and conducted, and the passenger fares and freight rates shall be so fixed, and the service given to the public upon and by the "Yale" and "Harvard" shall be of such a character with relation respectively to

*Exhibit D. 38.*

the voyages between said ports of said other ship or ships to the passenger fares and freight rates upon it or them, and to the character of service given to the public upon and by it or them, that said ship or ships shall have no unnecessary point of advantage of any nature in competing for business with the "Yale" and "Harvard." In case either or both said steamships, the "Yale," and the "Harvard" shall be disabled so as necessarily to be laid up, and some other ship in whose earning Navigation Company shall be interested may without loss to Steamship Company make voyages between San Francisco and San Pedro, it is understood that the parties hereto will make some fair arrangement for such operation of such ship adapted to the particular circumstances of the case. If Navigation Company shall during said term acquire such pecuniary interest in any such ship or ships and Steamship Company shall thereafter be dissatisfied with the subsequent results from the operation of the "Yale" and "Harvard" in competition with such ship or ships, upon the written demand of Steamship Company, Navigation Company shall, within thirty days after receipt of such written demand, either consent in writing to the exercise of Steamship Company of a right to terminate this indenture at such date as may be thereafter designated by the Steamship Company, of which date at least sixty days written notice in advance is to be given to Navigation Company, or shall covenant and agree in writing with Steamship Company that thereafter during the remainder of said term Navigation Company shall, in lieu of all the payments to Steamship Company above provided for in this indenture,

*Exhibit D. 38.*

make to Steamship Company other equal monthly payments in advance at the rate of four hundred thousand dollars ($400,000.) per annum during the remainder of said term at such place in the City of New York as shall from time to time be designated in writing by Steamship Company.

9. Steamship Company covenants and agrees that it will at its own expense and not as a part of the cost of the operation of the "Yale" and "Harvard," as intended by this indenture, pay all taxes lawfully levied upon said steamships, or either of them, at their home port, and that it will furthermore comply, during said term, with the provisions of its first mortgage to American Trust Company regarding insurance of said steamships. All repairs to either of said steamships which under said policies of insurance are paid for by the underwriters, shall be made under the supervision and direction of an accredited agent of Steamship Company. In case Steamship Company shall, at the request of Navigation Company agree to the operation of the "Yale" and "Harvard," or either of them, between one or more of the ports of San Francisco, San Pedro and San Diego, and any other port on the Pacific coast, it is understood, and Navigation Company hereby covenants that any resulting additional cost to Steamship Company for insurance of said steamships, or either of them shall be borne by Navigation Company.

10. Navigation Company covenants and agrees promptly to pay to Steamship Company the cost to Steamship Company of all ships-stores and provisions upon the "Yale" and "Harvard," or either of them, at the beginning of said term.

*Exhibit D. 38.*

11. Navigation Company covenants and agrees that it will not, through any act or omission or neglect on its part, cause or suffer any lien to be created upon either of said steamships. If any suit *in rem* shall at any time hereafter be brought against either of said steamships "Yale" and "Harvard," because of anything claimed to have happened during said term in connection with the operation of said steamships, or the conduct by Navigation Company of business of Steamship Company under this indenture, unless the demand of said suit shall be covered by policies of insurance taken out by Steamship Company, Navigation Company will, within twenty days after the bringing of such suit, either secure the withdrawal of such suit, or will deliver to Steamship Company its bond executed to Steamship Company, with good and sufficient surety, conditioned on the payment by Navigation Company, in accordance with the provisions of this indenture, of any judgment obtained in such suit, which bond shall be for an amount of money equal to one and one-half times the amount of the demand in such suit, unless otherwise agreed in writing by the parties hereto. In case Navigation Company shall procure a bond necessary to secure the release of either of said ships from under a libel, the proper actual cost of obtaining said bond shall be chargeable against the gross income from said ships for the purpose of ascertaining divisible net profits under paragraph 3.

12. It is especially understood and covenanted and agreed by and between the parties hereto that Navigation Company shall have no authority to make any contract in the name or behalf of said Steamship Company, nor in the name or be-

*Exhibit D. 38.*

half of Navigation Company as agent of said Steamship Company, without the written consent of Steamship Company; but nothing herein contained shall prevent Navigation Company from making, on its own behalf, any contracts in connection with business of Steamship Company which shall not be binding upon Steamship Company; provided, however, that Navigation Company expressly covenants and agrees that it will not incur, or cause or permit to be incurred, any debts or liabilities, immediate or future, definite or contingent, in connection with either or both of said steamships, or the maintenance, operation or care thereof, or of any other character such as might, under any conditions, result in the creation of liens on said steamships, or either of them, exceeding at any one time the aggregate amount of $50,000.

13. Within twenty-five days after the close of each calendar month during said term, Navigation Company shall deliver to Steamship Company, at such address as shall from time to time be indicated by Steamship Company to Navigation Company a statement of Navigation Company sworn to by its president and secretary showing fully and in detail the nature and amount of all then unpaid debts and unextinguished liabilities incurred, or caused or permitted to be incurred, by Navigation Company, prior to said close of said month, whether immediate or future, definite or contingent, so far as they can reasonably be ascertained, which might, under any conditions result in the creation of a lien on said steamships, or either of them.

14. Navigation Company covenants and agrees at all times to comply with and obey all

*Exhibit D. 38.*

laws and governmental ordinances and regulations affecting the maintenance or operation of said steamships.

15. Navigation Company covenants and agrees at all times during said term to select reputable and capable men to be masters of said steamships.

16. Navigation Company covenants and agrees that it will do no act and make no omission involving a violation in any respect of any of the terms, conditions and covenants of the first mortgage of Metropolitan Steamship Company to American Trust Company dated November 15, 1909.

17. The parties hereto mutually covenant and agree that the character and value of certain perishable parts belonging to said steamships "Yale" and "Harvard" are correctly shown on an inventory to be hereto attached as "Schedule A;" and Navigation Company covenants and agrees that at the end of said term, or sooner termination of the rights of the Navigation Company herein provided for, each of said ships, except in case of the total loss of said ship, shall have on board as property of Steamship Company similar articles which shall then be an aggregate value at least equal to the aggregate value shown upon said inventory "Schedule A."

18. If Navigation Company shall at any time during said term make default in the full performance of any of its covenants, agreements or guarantees herein set forth, or of any of its duties under this indenture, and said default shall continue for twenty days after written notice thereof to Navigation Company, then at the option of Steamship Company the rights of Navigation Company under

*Exhibit D. 38.*

this indenture may be terminated by Steamship Company, whereupon Navigation Company shall be under all the obligations which under this indenture it will be under at the end of the term hereof if it shall continue in full force throughout said term without previous default hereunder by Navigation Company. Navigation Company covenants and agrees fully to indemnify Steamship company for all loss, cost or damages suffered by Steamship company as a consequence of any failure of Navigation Company to fully perform during the whole of said term all of its obligations, whether arising under this indenture or arising out of the acts or defaults of Navigation Company, or resulting from the termination of the rights of Navigation Company under the preceding provisions of this paragraph.

19. It is not the intent of the parties hereto that Navigation Company shall be restricted from using as its own agency in the operation of the "Yale" and "Harvard" another corporation which shall at the same time operate other ships including substantially all of the ships owned by Navigation Company, provided, however, that the liabilities, duties and obligations of Navigation Company under this indenture shall not be thus impaired.

20. If at any time within two (2) years from the beginning of the term of this indenture the Navigation Company shall notify the Steamship Company in writing that it so desires, the term of this indenture shall be extended to December 31st, 1926, and this indenture shall thereafter be construed in all respects as if the term therein now stated ran until said date.

In witness whereof, each of the parties hereto has caused this indenture to be executed in du-

*Exhibit D. 39, D. 40.*

plicate and to be signed by its president and its corporate seal to be hereunto affixed and attested by its secretary as of the 31st day of July, 1916.

METROPOLITAN STEAMSHIP COMPANY

By H. R. VON WESSELY,
*President.*

[SEAL]

Attest:

WARREN D. CHASE,
*Secretary.*

PACIFIC ALASKA NAVIGATION COMPANY,

By H. V. ALEXANDER,
*President.*

[SEAL]

Attest:

E. B. ROGERS,
*Secretary.*

The foregoing form of contract is satisfactory to us.

Dated July 31, 1916.

H. V. ALEXANDER,
L. S. MEANNY,
*Committee of Board of Directors,*
*Pacific Alaska Navigation Company.*

**Exhibit D. 39.**

Inventory of equipment of Steamships Yale and Harvard. (Not printed.)

**Exhibit D. 40.**

Letter, George A. Fernald & Co. to Warren D. Chase, dated September 11, 1916. (Printed on page 505 of record.)

## Stipulation as to Testimony of Grace A. Lord and Ethel M. Scribner.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| *Between*<br>JENNIE R. MORSE, *et al*,<br>*Complainants,*<br>*and*<br>METROPOLITAN STEAMSHIP COMPANY, *et al*,<br>*Defendants.* | *On Bill, etc.*<br>*Stipulation.* |

An order having been made in this cause on the 17th day of April, 1915, appointing Sherman I. Gould, as a commissioner to take the depositions of Grace A. Lord and Ethel M. Scribner, material witnesses for the complaintant, residing in the State of Maine, and counsel having agreed in lieu of taking said depositions that the said Grace A. Lord and Ethel M. Scribner if examined would testify as hereinafter stated, and counsel for all parties being willing, in order to save necessity of a trip to Maine for the purpose of taking the depositions of the said witnesses, that this stipulation may be read at the hearing of the cause with the same force and effect as though the depositions of the said witnesses had been taken;

It is therefore STIPULATED AND AGREED by and between the complainants and all of the defendants as follows:

*Stipulation as to testimony of Grace A. Lord.*

That the testimony of Miss Grace A. Lord upon the taking of her deposition would be as follows:

That said Grace A. Lord is a resident of Hallowell, in the State of Maine, and is not a resident of the State of New Jersey. For at least fifteen years prior to the death of John F. Hill, one time governor of the State of Maine, and particularly during the month of January, 1912, she was employed by the said John F. Hill as his stenographer. That she personally wrote down at his dictation the following letters, all addressed to Edward D. Robbins:

Letter of John F. Hill to Edward D. Robbins dated January 5th, 1912, Exhibit C. 143.

Letter of John F. Hill to Edward D. Robbins dated January 6th, 1912, Exhibit C. 144.

Letter of John F. Hill to Edward D. Robbins dated January 12th, 1912, Exhibit C. 147.

Letter of John F. Hill to Edward D. Robbins dated January 12th, 1912, Exhibit C. 148.

Letter of John F. Hill to Edward D. Robbins dated January 13th, 1912, Exhibit C. 149.

Letter of John F. Hill to Edward D. Robbins dated January 15th, 1912, Exhibit C. 150.

Letter of John F. Hill to Edward D. Robbins dated January 16th, 1912, Exhibit C. 152.

Letter of John F. Hill to Edward D. Robbins dated January 20th, 1912, Exhibit C. 152a.

That following the writing down of each of said letters in shorthand she transcribed the same in proper form upon her typewriter. That thereafter she delivered each of said letters to the said John F. Hill for his signature. That said John F. Hill personally signed each one of said letters, placed each one of them in an envelope properly addressed to the said Edward D.

Robbins, and sealed each of said envelopes and placed each one of said letters in the mailing box in his office, with the exception of two of said letters, which he personally took to the post office in the City of Augusta, Maine, for the purpose of mailing the same.

That she still has in her possession the original stenographic notes from which the said letters were transcribed. That the said notes of each of said letters contain her check mark indicating that said letters were transcribed by her, and that she has personal recollection in addition of having transcribed each of said letters.

That apart from said check marks in her said notes she has personal recollection of having transcribed each of said letters and delivering them to said John F. Hill for his signature. That she saw the said John F. Hill sign each of the said letters and place the same in their envelopes and seal said envelopes and place proper stamps for mailing thereon. That there was in the office of said John F. Hill a box known as the mailing box, in which all letters to be mailed were placed. The custom was for the letters placed in this box to be taken to the post office twice each day, once at noon and once at night. That it was the duty of one Ethel M. Scribner, a clerk in the office of said John F. Hill to mail such letters as were placed in said mailing box.

It is further STIPULATED AND AGREED that the testimony of Ethel M. Scribner upon the taking of her deposition would be as follows:

That said Ethel M. Scribner is a resident of the City of Augusta, in the State of Maine, and is not a resident of the State of New Jersey. That for some years prior to the death of John

F. Hill, one time governor of the State of Maine, she was employed as a clerk in his office. That she was so employed during the month of January, 1912. That there was in the office of the said John F. Hill a box known as the mailing box, in which all letters to be mailed were placed. That it was the duty of the said Ethel M. Scribner to personally take such letters and other matter to be mailed as was placed in said box to the post office at Augusta, Maine, twice each day, once at noon and once at the close of business at the end of the day. That she did personally take to the post office all such mail matter as was placed in said box during the month of January, 1912. That she was in attendance at the said office in the performance of her duties on each business day during the month of January, 1912. That she distinctly remembers, among other mail matter which she took from said box and mailed in the post office during the month of January, 1912, were letters addressed to Edward D. Robbins. That she was closely associated in her work with Grace A. Lord, the private stenographer of the said John F. Hill and knows of her own knowledge that some of the letters in evidence as Exhibits C. 143, C. 144, C. 147, C. 148, C. 149, C. 150, C. 152 and C. 152a were typewritten by the said Grace A Lord from her stenographic notes, and knows that on the same days that such letters were so typewritten letters addressed to the said Edward D. Robbins were placed in the mailing box in said office and mailed by her in the post office at Augusta, Maine.

It is further stipulated and agreed that the defendants and each of them shall reserve the right to object to any and all parts of any of

such testimony upon the heading, with the same force and effect as if the depositions of the said witnesses had been taken and such objections had been properly made at the time of the taking thereof.

Dated April 28th, 1915.

McCARTER & ENGLISH,
*Solicitors of Complainants.*

LINDABURY, DEPUE & FAULKS,
*Solicitors of Defendants Metropolitan Steamship Co., Engelke, Martinsen and Hughes.*

PITNEY, HARDIN & SKINNER,
*Solicitors of Defendant Pacific Navigation Co.*

## Further Testimony Taken February 1, 1917.

IN CHANCERY OF NEW JERSEY.

*Between*

JENNIE R. MORSE,
*Complainant,*

*and*

METROPOLITAN STEAMSHIP COMPANY, *et al.*
*Defendants.*

*February 1, 1917.*

Before His Honor, Vice-Chancellor Lane.

Further hearing upon the question as to whether or not a receiver should be at this time appointed.

Mr. English, Mr. Martin W. Littleton, Mr. Swacker and Mr. Brown, for the complainants.

Mr. Faulks for the defendant Metropolitan Steamship Company and individual defendants.

Mr. Ward for the Pacific Navigation Company.

Mr. Wickersham for the Atlantic, Gulf & West Indies Steamship Company, a holder of sixty thousand dollars of two year notes, and one hundred and fifteen thousand dollars of ten year notes.

No other appearances on behalf of either the creditors, stockholders or bondholders, although the order to show cause which was made last week was mailed as directed in that order.

Mr. English states that he has letters from holders of upwards of six hundred and twenty-five thousand of bonds who approve a receiver-

ship and suggest Mr. Reid as receiver. He also states that he has letters from holders of upwards of five hundred thousand of the ten year demand notes, and various shares of stock and various other notes which he does not know accurately.

Mr. Wickersham while not opposing the appointment of a receiver suggests that there should be a delay in the appointment in order that certain negotiations might be carried to what he thinks would be a successful conclusion, as represented to him by his clients, and would avoid the necessity of the receivership.

There is no opposition shown to the appointment of a receiver except that made by the company itself.

It is suggested that the Court ought not to delay because of certain statements made over in New York to Mr. Reid by Mr. Stone who was a witness in this case.

WALTER E. REID, sworn.

*Direct examination* by Mr. Littleton.

Q Mr. Reid, did you on yesterday have a conversation with Mr. Galen Stone in New York City? A I did, sir.

Q Where? A At the office of Hayden & Stone, 25 Broad street.

Q What time of day? A I arrived at the office about ten o'clock, and I think I waited about twenty minutes for Mr. Stone.

Q Did the conversation relate to the question of this receivership pending before his Honor here? A It did, yes, in part.

Q Did Mr. Stone say anything to you about the question of whether a receivership was being

sought or would be sought in California? A He did.

Q What did he say? A Mr. Stone said that already a plan had been laid to apply for a receiver in California, and that a receiver here would get your people nothing, I think he said a trap, something about walking into a trap; but I want it thoroughly understood that Mr. Stone was not hostile to me personally; this was a statement that he made I think in the way of advice to me.

Q Advice as to what, as to what you should do? A He thought that we should not press the matter of having a receiver for this company, that steps would be taken to reorganize the company and already he had his plans, which he partly disclosed to me. And, if you will allow me, I stated to him that I would be very glad to enter into any plan with him or anybody else, but my exact words were that the cards must be laid on the table in front of the court.

Q What did he say fully in reference to the statement that a receivership would be sought or was being sought, or plans on foot for a receivership elsewhere than here? A I don't just get your question.

Q Did he say anything about the second mortgage bonds? A I referred to that in some way, he brought up the question of the second mortgage bonds and I told him it was no good, that I didn't consider Robbins had any interest in the second mortgage; he said "Robbins doesn't own the second mortgage bonds, has nothing to do with it," and I said "Well, the New Haven," and he said "We will eliminate

Robbins from this question," so I assumed that he represented the New Haven himself.

Q Did he say anything about the fact of a receivership being sought in California? A Why, yes, he stated that plans were already laid for that.

Q Did he say anything about whether you would be beaten here on his opposition? A Yes.

Q What did he say about that? A He said that I would be beaten here "You will be beaten here," I assume that he said my friends, including myself.

Q Did he tell you he owned some of the first mortgage bonds. A No, he did not.

Q Do you know that he does? A I do not. I assumed from what he said he did, controlled them anyway.

*Cross examination* by Mr. Faulks.

Q Mr. Reid, was this Mr. Galen Stone that you had this conversation with? A Yes.

Q Do you know of your own knowledge whether he is in any wise connected with the New Haven Railroad? A Not at the present time; I have known his history pretty well for some years; I knew he was the director there and had several meetings with Mr. Robbins within a few days, at least he has told me so.

Q That is not what I asked you. I asked you as to what your personal knowledge is as to his connection with the New Haven Railroad? A I will have to answer that I don't know of any, I have no knowledge.

Q Where did this conversation take place? A At his office in Hayden, Stone & Company, 25 Broad.

Q Anybody else present? A Mr. Nichol was present a part of the time.

Q Just what was it that Mr. Stone said with reference to the second mortgage bonds and the possible foreclosure of that mortgage? A He said that already plans had been laid to defeat this question.

Q (*By Mr. Wickersham.*) To what? A To defeat this action here, or words to that effect, I can't remember, he said it very hastily, and it was quite a warm meeting and there was a great deal said, but he said already plans had been laid to apply for a receivership in California, and that a receiver here would go for nothing.

Q You say he said that Mr. Robbins did not own these second mortgage bonds? A He did.

Q Did he say who did own them? A He did not.

Q Do you know who owned them? A No, I assume that he knew who owned them.

Q (*By Mr. Wickersham.*) You assume what? A I assume he knew who owned them.

Q You said that he also said that he thought that steps should be taken to reorganize the company? A He did, and unfolded a portion of his plan.

Q Was anything said about the foreclosure of the second mortgage or the first mortgage or any other mortgage? A He said that the first mortgage bondholders would or might come in here and take the company away from us; I think Mr. Nichol mentioned something to that effect at the same time, and I told him that I was there to tell him that they would not; he said "Do you mean that you would take up those bonds;" I said "I am here to tell you that, before I would allow them to take it away."

Q Is that all that was said on the question of the foreclosure of any mortgage? A Mr. Faulks, I really have given it very little thought, only that portion of it; of course there was a great deal said; I cannot state to you every word that was said there, but that is the substance of it.

Q I haven't asked you to state every word that was said, I have asked you a question which you must be able to answer as to whether or not anything else was said than what you have told us with reference to the possible foreclosure of any mortgage? A I have told you there were other things said but I cannot remember them all, unless you refresh my memory on something perhaps that you may know.

Q And yet this conversation took place only yesterday? A Yes.

Q (*By the Court.*) Had there been negotiations pending between the parties in an attempt to settle this matter out of court? A Not on my part, your Honor.

Q (*By the Court.*) On the part of others? A I have heard roundabout rumors, but I paid no attention to them.

Q (*By the Court.*) No proposition has been made directly to you or any interest that you represent? A I cannot truthfully state that there has; there has been a suggestion made, but I cannot truthfully state that any proposition was made because I haven't cared to discuss that; I simply told them that whatever could be done outside on this proposition could be done under a receivership or under the eyes of the court; those were my exact words.

*The Court.* I have come to the conclusion to appoint a receiver and to appoint a re-

ceiver at once. I have thought considerable about it since I handed down the conclusions on the facts and I have had the benefit of Mr. Faulks' argument several times, and I do not think that any act that I would take or could take short of the appointment of a receiver would result in giving the creditors and stockholders of this concern the adequate remedy to which I think they are entitled. I might issue injunctions, mandatory or prohibitory, from now on, and the directors of the corporation, who are pure dummies, representing, as I have held, Robbins, could either obey them or ignore them as they saw fit. To compel the complainants after they have gone through this long four years of litigation to get at facts which I hold should have been divulged to them in the beginning, and to institute in their own behalf or in the name of the corporation litigation which in the inception at least had to be at their own expense and be met by at least the passive opposition of their own trustees, I think would practically deprive them of any remedy. I will appoint a receiver.

## Report of Edward M. Colie, Receiver.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| *Between*<br>JENNIE R. MORSE, *et al.*,<br>*Complainants,*<br>*and*<br>METROPOLITAN STEAMSHIP COMPANY, *et al.*,<br>*Defendants.* | *On Bill, etc.*<br>*Report of Edward M. Colie, Receiver.* |

TO THE HONORABLE EDWIN ROBERT WALKER,
*Chancellor of New Jersey.*

The report of Edward M. Colie, receiver of Metropolitan Steamship Company, respectfully shows:

1. Following his appointment on February 2d, 1917, he immediately qualified by entering into the bond as required by the terms of the order.

2. On Tuesday, the 6th day of February, 1917, he went to Hartford, Connecticut, accompanied by Conover English and Walter E. Reid, for the purpose of taking possession of the assets of the defendant company in that jurisdiction, having previously notified Warren D. Chase, the treasurer of the defendant company, as set forth in the following telegrams:

"Newark, N. J., February 3, 1917.

Warren D. Chase, Esq.,
36 Pearl St., Hartford, Conn.

Expect to be in Hartford Tuesday morning, and will call on you. Hope you will be in.

Conover English."

"Hartford Ct. Feb. 4-17

McCarter & English,

Yours received was away yesterday, while I shall be glad to see you and talk with you at any time I suggest that if your business relates to pending case it would be proper to discuss the matter with our attorney Mr. Faulks instead of going over his head.

Warren B. Chase."

"Newark, N. J. February 6, 1917.

Mr. Warren D. Chase,

Hartford, Conn. DAY LETTER.

Have shown Mr. Faulks your telegram. Receiver and I are coming to Hartford tomorrow arriving there twelve seven to present to you the order appointing receiver and authorizing him to receive the money books and papers in your hands and shall ask you to turn over the money and any papers and books you may have of the company. Wish you would communicate with Mr. Faulks. Telephone Elizabeth 1106.

Conover English."

3. On arriving at Hartford he proceeded at once to the office of the Metropolitan Steamship Company, located at the office of Messrs. Black & Chase, 36 Pearl street, and inquired for Mr. Chase. He was informed by the young lady in charge of the office that Mr. Chase was not there; that he had left on the Sunday previous; that she did not know where he had gone or when he would return, but stated that he would be away at least a week, and that he had left no address at which he could be reached, and his office did not know where he was, or where he could be reached.

4. He inquired the house address of the said Warren D. Chase, and caused an investigation to be there made by the said Conover English, who reported that he had found the house; that Mr. Chase was not at home, nor was Mrs. Chase at home; that he had interviewed a servant who stated that she was employed in the household, and who stated that Mr. Chase was away; that she did not know where he had gone, or when he would return, or where he was or where he could be reached. The said Conover English thereupon served upon the said servant a copy of the order appointing your receiver, certified under the seal of the court.

5. Upon leaving the office of the said Warren D. Chase your receiver went to the banking rooms of the Connecticut Trust & Safe Deposit Co. which is located in the same office building as that of said Chase, and there interviewed the treasurer Hosmar P. Redfield, and one of the vice presidents, Nathan D. Prince, and served upon said vice president a copy of the order of appointment, certified under the seal of the court, and demanded of him the assets of that company on deposit with it.

6. Thereupon the vice president stated that the funds in the possession of that institution were held by attachment, and produced the writs of attachment that had been served upon it, but declined to state the amounts of the attachments. He did state that in one of them Edward D. Robbins appeared as plaintiff, and in the other two the Pacific Company appeared as plaintiff, and that the amount of the attachments exceeded the amount of money on deposit to the credit of the Metropolitan Steamship Company in that institution. The vice president of the said trust com-

New Jersey State Library

pany informed your receiver that the Robbins attachment was issued out of the Superior Court of Connecticut for New Haven County, and that the two Pacific company attachments were issued out of the Superior Court of Connecticut for Hartford County. He refused to deliver to your receiver the moneys on deposit to the credit of said company because of said attachments.

7. Your receiver thereupon went to the clerk's office of the Superior Court of Connecticut for Hartford County, which was located in Hartford, and interviewed the clerk. The clerk stated that he had no writs there; that under the Connecticut practice the writs did not come to him until just before the return day, and they were probably in the hands of the deputy sheriff. Thereupon your receiver applied at the sheriff's office, to the deputy sheriff, and after some delay succeeded in finding the deputy sheriff who had the writs in his posssion; that the deputy thereupon stated that he could not permit copies to be taken of the writs, nor do more than state generally what they were. He stated that the writ issued out of the Superior Court of Connecticut for New Haven County was in his possession, was dated January 19th, 1917, and was issued for $10,000, to recover $7,500 of legal fees due the said Robbins, and interest thereon, and that the writ was for $10,000. He then stated that the two writs of the Pacific Company were respectively for $60,000 and $90,000 and were for second mortgage bonds past due, with coupons thereon, and were issued February 2nd, 1917. He further stated that under the writs for the Pacific Company he had attached a deposit of the Metropolitan Steamship Company in the City Bank & Trust Co. of Hartford.

8. Thereupon your receiver went to the City Bank & Trust Co., and saw Mr. Alfred W. Jacobs, cashier; Mr. H. A. Allen, vice president, and Mr. William P. Landon, secretary and trust officer; that he served upon said vice president an exemplified copy of the order of his appointment, and demanded delivery to him of the assets of the company in its possession. Thereupon they stated that the assets were held by an attachment in excess of the money on deposit, and subsequently and during the same interview your receiver saw the counsel of the bank, Stewart N. Dunning, Esq., and on his advice one of the officers stated that the amount on deposit was $32,455.75, and the officers refused to deliver to your receiver, because of said attachment, the funds in its hands.

9. Following the investigation at the City Bank & Trust Co., your receiver caused an exemplified copy of his order of appointment to be served by the said Conover English on the office of the Metropolitan Steamship Company, by handing the same to the young lady in charge of the office of Warren D. Chase, being the same young lady who had given the information earlier in the day as to Mr. Chase's absence.

10. By reason of the interference of said Robbins and said Pacific Company, through said writs of attachment, your receiver is thwarted in his effort to get possession of the property of the Metropolitan Steamship Company in the State of Connecticut, and that aside from the assets in the State of Connecticut, held by virtue of said attachments, the only other physical assets of the company are the steamships Yale and Harvard, so far as your receiver is advised.

EDWARD M. COLIE,
*Receiver.*

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

EDWARD M. COLIE being duly sworn upon his oath says: I am the receiver of Metropolitan Steamship Company, appointed by the order of this court dated February 2nd, 1917. I have read the foregoing report and know the contents thereof, and the matters and things therein contained are true so far as they relate to my own acts, and so far as they relate to the acts of others I believe them to be true.

EDWARD M. COLIE.

Sworn to and subscribed before me this 13th day of February, 1917.

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

CONOVER ENGLISH being duly sworn upon his oath says: I am the person mentioned in the foregoing report of the receiver, and accompanied said receiver to Hartford on February 6th, 1917. I have read the foregoing report and know the contents thereof, and the matters and things contained are true as far as they relate to my own acts, and so far as they relate to the acts of others I believe them to be true.

CONOVER ENGLISH.

Sworn to and subscribed before me this 13th day of February, 1917.

DANIEL B. SMITH,
*Notary Public for New Jersey.*

[SEAL]

## Conclusions on Facts.

Filed January 19, 1917.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| *Between* JENNIE R. MORSE, *et als.* *Complainants,* *and* METROPOLITAN STEAMSHIP COMPANY, *et als.* *Defendants.* | *Conclusions on facts.* |

Conover English, Esq., (McCarter & English); Mr. Brown, of the New York bar; Mr. Swacker, of the Washington, D. C., bar, for complainants.

Frederic J. Faulks, Esq., (Lindabury, Depue & Faulks;) Mr. Nicholson, of the New York bar, for defendants.

Argued January 18, 1917.

Facts decided January 19, 1917.

LANE, *V. C.*

I am in a better position to determine the facts at this time than I ever will be again. The case has taken three weeks to try and a full day to argue. Over thirteen hundred pages of testimony were taken out of court, most of which has been read, and in excess of seven hundred pages has been taken before me. Over two hundred exhibits have been marked. I do not think that in reaching a conclusion as to the salient facts which must be determined in order to arrive at

a decision it is necessary to discuss in any great detail this mass of evidence. The complaint of the complainants, stockholders and creditors of the Metropolitan Steamship Company, briefly, is that in the year 1910 Edward D. Robbins acquired, either for himself or on behalf of the New York, New Haven & Hartford Railroad, or for other interests, control of the company; that he has continued to control it down to the present time; has used it solely for his own interests and to the detriment of the other creditors and stockholders; that the net result of his manipulations is that he has succeeded in getting out of the corporation all that he ever paid for its securities; has denuded the corporation of its assets; has practically caused it to discontinue business; has left the remaining bondholders, creditors and stockholders, with only the Yale and Harvard to satisfy their claims; that in the course of his operations he has committed a breach of the trust, which he, as the controlling interest in the company, bore to the remaining creditors and stockholders. In short, I find that the charges are proven, and this I think may be demonstrated by a brief resume of what actually transpired.

If Robbins had been called to the stand I think that the relevant and material testimony might have been put in within one day. Almost every line of inquiry led to a situation that could only be properly and clearly explained by him. He was active in the defense of the case, and was present at certain of the hearings when testimony was taken out of the state. Notice was given by the defendants to the complainants that he would be examined at one of these hearings and at that time counsel for the defendants

stated that he would not call him then but would at the hearing before the Court. He was present in the court room when the case was opened. He is not called, and the excuse now given is that he thought it unfair that Mr. Swacker should participate in the trial. Mr. Swacker had been active as a representative of the government in the investigation of the New York, New Haven & Hartford affairs in New York and in the hearings before the grand jury which resulted in the indictment of Robbins and also in the trial of that indictment. When application was made by counsel for the complainants to permit Mr. Swacker to participate in this trial objection was made by counsel for the defendants upon practically the same ground. It was not brought to the attention of the court that counsel conceived that a participation by Mr. Swacker would render it improper or impossible to examine Robbins. The Court distinctly stated at the time that it would not permit Mr. Swacker to actively intervene in any aspect of the case where it would be at all possible that he could use the information which he had obtained as a government agent, and Mr. Swacker has not so intervened actively although present with counsel for complainants advising with him. The Court was not asked to prevent the presence of Mr. Swacker in the court room. No application was made on behalf of Robbins for protection. If request had been made, I should have prevented Mr. Swacker cross examining Robbins. Whatever Robbins' personal feelings may have been it was within the power of the defendants to subpoena him when within the jurisdiction of this Court or to take his testimony *de bene esse*. Wherever there is a situation, therefore, which

admits of two inferences, one favorable and the other adverse to the defendants, and where this Robbins could, if he desired, explain. I shall draw that inference adverse. I stated practically the same thing yesterday, and no application has been made by the defendants to examine Robbins.

The Metropolitan Steamship Line was a concern that was owned by one Whitney prior to 1905 and operated a freight service between New York and Boston. It had been operated for twenty years or more, and successfully. In 1905 Charles W. Morse became possessed of the control of the line. It was operated by a corporation incorporated under the laws of the State of Maine, known as the Metropolitan Steamship Company (hereafter called Maine No. 1). Morse conceived the idea of entering into a passenger business and contracted for the building of two large steamers, the Harvard and Yale, at a cost roughly of a million two hundred and fifty thousand dollars a piece. These steamers were something entirely different from anything that had been operated on the Atlantic coast and were intended to satisfy the most exacting trade between the two ports. After these boats had been in operation for a few months, and as a result of the panic of 1907, and the inability of Morse, as he says because of the refusal of Mr. Morgan to permit certain banks upon which he, Morse, depended for the financing of the large expenditures to which the line was put by the construction of the Harvard and Yale, to obtain funds to longer finance the line there was a receivership. Whether Morse is correct as to the reason why he could not obtain funds I do not determine as it is not essential. The fact is he could not obtain them and that the receivership

was the result not of the inability of the line to earn money but of extraordinary circumstances. Prior to the receivership Morse and Mellen, president of the New York, New Haven & Hartford Railroad Company, had been in negotiation with a view either to the sale of the Morse lines to the New York, New Haven & Hartford (hereafter called the Railroad), or the reverse. A tentative agreement had been arrived at for the transfer of the Railroad lines to Morse. This, however, was voted down by the board of directors of the Railroad, for what reason does not appear. The Railroad, or its subsidiary, at or about the time of the construction of the Harvard and Yale, commenced the construction of three boats, the Old Colony, Bunker Hill and Massachusetts. These were built for the purpose of competing with the Metropolitan Steamship Company in the freight business between New York and Boston. It was within the contemplation of the Railroad that the Metropolitan Steamship Company might be forced, by reason of the competition, to suspend business and that the Old Colony, Bunker Hill and Massachusetts would then be converted into passenger steamers if the Railroad thought it advisable to continue the outside line. I believe the testimony of Morse that Mellen told him that the Railroad did not intend to permit the competition of the Harvard and Yale, and that Mellen said that the Railroad would continue to lose money in the operation of the Old Colony, Bunker Hill and Massachusetts until it stopped such competition. Mellen very frankly admits that while he was president of the Railroad it was its desire to have a monopoly of the traffic between New York and Boston. During the receivership the line was continually in oper-

ation, with the result that on the first day of May, 1909, a reorganization agreement was proposed to the various interests involved. The reorganization managers were George E. Shaw, Henry Hornblower and John W. McKinnon. The plan proposed was that the total debt of the company, which amounted at that time to, first mortgage five per cent. sinking fund bonds, part of an authorized issue of three million dollars secured by the mortgage to the American Trust Company of Boston, trustee, with accrued interest $2,591,981.18, debts secured by collateral with accrued interest $147,325.82, preferred debt $1,024,750.21, unsecured debt $1,043,902.41, be liquidated in the the following way. A corporation was to be formed known as the Metropolitan Steamship Line, with securities as follows: thirty thousand shares of capital stock of the par value of one hundred dollars each, three million dollars; first mortgage five per cent. thirty year sinking fund bonds, three million dollars; two year six per cent. gold notes, five hundred thousand dollars, total, six million five hundred thousand dollars; these securities to be distributed to the interests involved in Maine No. 1 in a manner that I do not think necessary to here set out. The plan was changed as a result of the correspondence of September twenty-fourth, 1909, so that the capital stock was reduced to one million five hundred thousand dollars, and in lieu thereof there was to be issued ten year notes to the creditors of Maine No. 1 for the face of their claim. The reorganization managers were to buy in the property of Maine No. 1 and transfer it to the new corporation. In pursuance of the plan there was incorporated the Metropolitan Steamship Company of New Jersey upon the

fifteenth day of November, 1909. Securities were issued and there came into possession of the Assets Realization Company, of which John W. McKinnon, one of the reorganization managers, was representative, the following: 14,323 shares of capital stock out of the total issue of 15,000; $449,035.90 of ten year non-interest bearing gold notes; $500,000. of two year notes; $553,000. of first mortgage five per cent. sinking fund gold bonds; $375,923.14 demand notes. The corporation was organized, a board of directors was elected, dictated by the Assets Realization Company and it continued to operate its freight steamers (the passenger steamers being laid up for the winter as usual). In the year 1907 Captain Goodall of San Francisco conceived the idea that the Harvard and Yale would meet a situation which existed on the Pacific coast. He came on for the purpose of endeavoring to arrange to get them there. It is significant that one of the first persons to whom he went was Mellen, of the Railroad. The negotiations at that time were unsuccessful. In 1909 he again came East and saw the representatives of the Assets Realization Company. Goodall wanted the Harvard and Yale; he did not want the freight boats. He again entered into negotiations with Mellen in the latter part of 1909 with a view, if he could enter into a satisfactory arrangement with the Assets Realization Company under which he could secure the property of Maine No. 1, then in the hands of the receivers, of disposing of the the freight boats to the Railroad and taking the Harvard and Yale to the Pacific coast. It is at this juncture that Robbins appears. The proposition apparently struck Mellen favorably. He called in Robbins, who is the general counsel of

the Railroad; there were certain conferences and finally, although Mellen is favorable and directs Robbins to prepare a letter containing the terms of the agreement, Robbins finally says practically "Wait a while, I want to think about this." The result of his thought, according to Goodall, is that some time in the latter part of 1909 he considered the negotiations dropped. It is significant that after the reorganization agreement had been entered into in May, 1909, contemplating the formation of the Metropolitan Steamship Company of New Jersey, and the transfer to it of both the freight and passenger lines then operated by the receivers, and the operation of the lines for the benefit of the creditors and stockholders of the company, active negotiations were in progress to which the Railroad was a party which in effect contemplated the strangling of the corporation before it was born, and this without the knowledge of the independent creditors and stockholders of Maine No. 1, who were to receive in exchange for their claims against that corporation securities of the new concern. Upon the seventh day of January, 1910, Mellen writes to Goodall: "We have given consideration to your offer to sell to this company certain steamships for one million dollars and a half, and we have come to the conclusion it is impossible to accept it." One of the inferences I am going to draw adverse to the defendants because of their failure to call Robbins is that this letter was dictated by him and was simply and solely for the purpose of the record. Whether Robbins had come to the conclusion that it was unsafe for the Railroad because of the so-called Sherman Act to take the boats directly or whether he had conceived the idea of himself acquiring

them and running them in competition with his own company, in the view that I take of the case, makes little difference. It is taxing my credulity to the greatest extent to ask me to believe that Robbins acted throughout this transaction on his own behalf, and that he intended to acquire the control of the Metropolitan Steamship Company for the purpose of operating it in competition with the Railroad. Indeed, the testimony of Chase (Robbins' representative) is to the effect that from the beginning it was within the contemplation of Robbins to dispose of the freight boats, he says, to the Eastern Steamship Company, a concern then operating between Boston and ports in Maine. I am inclined to believe that whatever was done by Robbins was done in the interest of the Railroad. I do not mean that he had authority to act, but I think he thought he was so acting. If the Railroad intended to acquire these boats or to stifle their competition, but was afraid to act directly because of the Sherman Act, no better plan of procedure could have been adopted than was adopted, whereas if Robbins was acting independently and legitimately it is hardly conceivable that any such plan would have been followed. If it were necessary to determine whether or not the plan was conceived for the purpose of stifling competition and in the interest of the Railroad, I am inclined to think that I would so find. Robbins in the latter part of 1909 became very busy with the Assets Realization Company in negotiations which resulted in the agreement finally reached; he selected Chase, a lawyer in Hartford, as his agent, and throughout this transaction there was but one man who represented any financial interest, Robbins; neither Chase, Nicholson, or any

of the others who permitted themselves to be used, ever really had one dollar's financial interest except in such payments as were made to them for service. The result of the various organizations was the contract entered into between the Assets Realization Company and Douglas Nicholson, a New York lawyer, and a pure dummy, for Robbins, under which the Assets Company agreed to sell to Nicholson all the securities that the company became possessed of, for the sum of one million four hundred thousand dollars, and it also agreed to cause to be sold for one hundred thousand dollars fifty shares of the capital stock, $234,859.31 of ten year non-interest bearing gold notes and one hundred of the first mortgage five per cent. sinking fund bonds. These latter securities were under control of McKinnon as liquidating agent for the Bank of North America. The basis of the agreement was the warranty by the Assets Company that the total outstanding securities of the Metropolitan Company were capital stock fifteen thousand shares, three million of five per cent. sinking fund gold bonds, 500,000 two year six per cent. notes, thirty thousand dollar note due December 15, 1911, thirty thousand dollar note due September 24, 1912, $1,427,291.78 of ten year non-interest bearing gold notes, $375,923.14 demand notes. About the same date Robbins, through his dummy, Edward T. Canfield, entered into an agreement with the Hudson Navigation Company, of which John W. McKinnon is president, under which that company agrees to sell to Canfield three hundred and forty seven of the first mortgage five per cent. sinking fund gold bonds at a price of eight hundred dollars per bond and interest accrued from January first,

*Conclusions on Facts.*

1910. Prior to these agreements being executed and as a condition of their execution Robbins had acquired and obtained an agreement on the part of McKinnon and the interests that he represented that the freight boats and the Union Wharf property should be sold, and had acquired and obtained the passage of resolutions by the directors of the company authorizing the sale of all of the freight boats to Wing and Russell, a dummy for Robbins. This resolution was passed on the eighteenth day of February, 1910, and I hold that under the circumstances existing at that time it was dictated by Robbins. Robbins also required a resolution to be passed authorizing the sale of the Union Wharf property to Canfield, his dummy. Both of these contracts provided that payment be made in first mortgage bonds at par, a total of one million dollars, and that the property should be transferred free and clear of any incumbrance. About this time Robbins caused the incorporation of the Metropolitan Steamship Company of Maine (hereafter called Maine No. 2), and transfers were finally made from Wing and Russell, and from Canfield to Maine No. 2 of all of the freight steamers and the Union Wharf for a consideration as expressed of $1,500,000. It was Robbins' intention from the beginning to have these transfers made from the Metropolitan of New Jersey to Maine No. 2. The transfers to Wing and Russell and to Canfield were mere means to an end. Both Canfield and Wing and Russell were dummies and were procured to make the offer. If the transactions were legitimate and open to the light of day, why this circumlocution? It was part of the agreement that payment should be made in bonds and that the boats and wharf should be

released from the lien of the first mortgage. The American Trust Company of Boston, the trustee under the mortgage, did on the request of the Metropolitan Steamship Company release both the boats and the wharf upon the surrender of one million of bonds which had been acquired by Robbins from the Assets company. The effect of the transaction to date was that Robbins secured, assuming the boats and wharf to have been sold at a fair value, the one million of dollars which were used in the purchase from the Metropolitan Steamship Company of New Jersey, by the surrender of one million dollars of first mortgage bonds, part of the securities he had obtained from the Assets Company. It is true that the first mortgage gave the company full power to pay such bonds as it chose. There is no provision for advertisement and the drawing by lot, but I find the preference created by Robbins in his own favor at that time was a breach of trust and a fraud upon the remaining bondholders. The purpose of having these resolutions passed by the board of directors of the company, at a time when apparently the directors were nominees of the Assets Company, was to prevent, in my judgment, its being asserted that the nominees of Robbins had created this preference. I will look behind the form, however, and find that in essence all of these resolutions were dictated by Robbins as a part of Robbins scheme.

We now come to the transactions that took place on the fifth of March, 1910. On that day the contract between Robbins and the Assets Company was closed. The cashier's checks were used to pay the Assets Company for the securities to be sold by it to the extent of one million

four hundred thousand dollars, and the ultimate source of this money as traced through the various depositions which were made on that day, seems to me to be as follows: The money was paid apparently in the name of Nicholson. The cashier's checks were bought by a check of the Maine No. 2 for one million four hundred thousand dollars. This money was obtained by Maine No. 2 from the New England Securities Company, a corporation incorporated by Robbins for the purpose of holding the securities of Maine No. 2. The money is represented by a deposit to the credit of the New England Securities Company of one million five hundred thousand dollars, on the same day obtained by a check from the Billard Company on the same day for one million five hundred thousand dollars which, in turn, is represented by a deposit on the same day to the credit of the Billard Company of one million five hundred and fifty thousand dollars, which, in turn, is represented by a check from Canfield, Robbins' dummy, for one million five hundred and fifty thousand dollars, which, in turn, is represented by a deposit to the credit of Canfield of one million six hundred thousand dollars, which, in turn, is represented by a check from Maine No. 2 for one million six hundred thousand dollars, which, in turn, is represented by a credit to Maine No. 2 of two items aggregating one million six hundred and fifty thousand dollars, which, in turn, is represented by two checks from the Billard Company, one million five hundred and fifty thousand dollars and two hundred thousand dollars, which, in turn, are represented by a credit to the Billard Company of one million seven hundred thousand dollars, which money the testimony shows was

borrowed from the Farmers Loan and Trust Company by the Billard Company on notes of the New England Investment & Security Company, guaranteed by the New York, New Haven & Hartford Railroad Company, so that the ultimate source of the money which went into this transaction was the credit of the railroad. The loan of the Billard Company from the Farmers Loan and Trust Company was paid off in March, 1911, with funds of the New England Navigation Company, a subsidiary of the Railroad. Why in March, 1911, the New England Navigation Company paid to Billard & Company the amount necessary to pay off the loan is not explained. It is one of the significant features pointing to the interest of the Railroad. Either Robbins, or some representative of the Billard Company, or of the New England Navigation Company, could explain it; they do not. I have never heard of such a financial maze. All of the securities of the Metropolitan Steamship Company of New Jersey, acquired as a result of the purchase from the Assets Company, went to Robbins or his nominees for his benefit. It is certain that no one had any financial interest in them other than Robbins and those whom he might represent. The stock of the Metropolitan Steamship Company of New Jersey, Chase says, went to Nicholson for him, and was held by him until the incorporation of the Chilmark Company, which, according to Chase's testimony, is Chase incorporated, at which time Nicholson transferred the stock to this concern. Chase now says it holds the stock for him and that the stock represents his compensation for the services that he rendered. I shall treat Chase and Robbins as one. The debt due for the money

obtained from the Billard Company was apparently represented by a note of the New England Securities Company, a concern incorporated by Robbins for the purpose of holding the stock of Maine No. 2, secured by the thirty thousand shares of that stock. The note has apparently been paid and the stock released. A renewal of it was discovered among the papers of Governor Hill of Maine, who was used by Robbins in a manner that I will shortly advert to. As a condition of the purchase of the securities owned by the Assets Company Robbins insisted that that company loan the Metropolitan Steamship Company of New Jersey a certain amount of money.

There came into the treasury of the Metropolitan Steamship Company of New Jersey approximately three hundred thousand dollars on March 5, 1910. The books do not show how this sum was disbursed. I find that in some way it was used to finance Canfield in his purchase from the Hudson Navigation Company of the three hundred and forty-seven bonds, which were used as a part of the purchase price by the Maine No. 2 and Canfield of the freight steamers and wharf. The operation of the steamships Harvard and Yale for the season of 1910 was given over to the Maine No. 2, or, in other words, Robbins. Maine No. 2 also acquired the Union Wharf and the use of the India Wharf. The contract for the operation of the Harvard and Yale provided for the payment to the Metropolitan of New Jersey of all but fifteen per cent. of the net operating income. It is insisted by defendants that this arrangement was most advantageous to the Metropolitan of New Jersey. The answer is

that if Maine No. 2 could operate the freight steamers and the Harvard and Yale profitably so could the Metropolitan of New Jersey. The effect of Robbins' participation in the affairs of the corporation up to this time, that is in 1910, was that all of the assets of the company had been put in charge of a new company which was being operated for the benefit of Robbins individually. He had succeeded in getting all of this property and had succeeded in getting the Metropolitan of New Jersey to pay the purchase price. Whether Robbins had at this time or not taken out of the Metropolitan of New Jersey sufficient to reimburse him for any moneys which he might have put up, it is not necessary to consider, because, as will shortly appear, he was fully reimbursed later. So far as the proofs go Robbins individually never put any money in this concern, nor did he individually ever become responsible for any.

The first time that any actual cash was used in the entire transaction was when the New England Navigation Company in March, 1911, paid the note of the Billard Company discounted by the Farmers Loan and Trust Company. Robbins never put his name to an obligation. Whenever he acted he did so through dummy corporations. Some time in the year 1912 Maine No. 2 was sold, together with various other concerns to the Eastern Steamship Corporation. This concern also took over the steamship holdings of the Railroad. I think it appears that certain of the property of Maine No. 2, which formerly belonged to the Metropolitan of New Jersey, became the property prior to this transfer of the Maine Steamship corpora-

tion, a concern controlled by the Railroad. The details I do not think essential. Robbins secured certain securities of the Eastern Steamship corporation as consideration for the transfer to that corporation of the property of Maine No. 2, which had previously been owned by the Metropolitan Steamship Company of New Jersey. In this transaction he secured the assistance of Governor Hill of Maine and had incorporated the Eastern Securities Company, and the securities, or part of them, which he obtained in consideration of the transfer of Maine No. 2, were lodged in the Eastern Securities Company in whose possession they still are—controlled by Robbins. After the season of 1910 a contract was entered into between the Metropolitan Steamship Company of New Jersey and a concern incorporated about that time known as the Pacific Navigation Company under which the Harvard and Yale, the sole remaining assets of the Metropolitan Steamship Company of New Jersey, were to be transferred to the Pacific coast and operated by the Pacific Navigation Company. This action was within the contemplation of Robbins from the beginning and he never would have gone into the deal if he had not contemplated the removal of the Harvard and Yale from the Atlantic coast and the disposition of the freight steamers and other property to corporations controlled by himself or by the Railroad; in other words, a suspension of the business of the Metropolitan Steamship Company of New Jersey. It is insisted that the contract made with the Pacific Navigation Company was most advantageous to the Metropolitan Steamship Company of New Jersey. Under the circum-

stances existing at the time this may have been so. The situation, however, had been created as the result of a breach of trust. As a part of the transaction involving the sending of the Harvard and Yale to the Pacific coast, there was incorporated a company known as the Pacific Company. That concern advanced to the Metropolitan Steamship Company of New Jersey $250,000 ($150,000 contributed by the Pacific coast interests, and $100,000 by Robbins), represented by preferred stock of the Pacific Company. There was placed by the Metropolitan Steamship Company of New Jersey a second mortgage upon the steamers Harvard and Yale for $750,000, represented by bonds; these bonds were immediately used to take up approximately $500,000 of demand notes held by Robbins, which he had obtained as a result of the purchase by him of the securities from the Assets Company, and the remaining $250,000 of bonds to secure the Pacific Company for the money advanced by it. There was a sinking fund agreement provided for in the mortgage. The result of the operation of the boats has been that all of the bonds have been paid with the exception of approximately $286,000, which are still held by the Pacific Company or by Robbins. It is said that the reason why those interested in the Pacific Navigation Company insisted upon the incorporation of the Pacific Company was that they should have some share in the profits which might be made out of the transaction. The common stock of the Pacific Company is divided, the large majority held by Robbins, a smaller amount by the Pacific Navigation Company.

*Conclusions on Facts.*

The steamers Harvard and Yale had been during the spring of 1910 converted from coal burners into oil at an expense of approximately $50,000 during the winter of 1909-1910. In the fall of the year, when they were sent to the Pacific coast, it was necessary to partially reconvert them at a cost of approximately fifty thousand dollars. Almost immediately after Maine No. 2 secured control of the steamers Harvard and Yale for the season of 1910 the Railroad began to change its steamers, Old Colony, Bunker Hill and Massachusetts, into passenger boats, so that upon the departure of the Harvard and Yale to the Pacific coast they were ready to take their places. I cannot escape the conclusion that this is not all mere coincidence. The operating agreement with the Pacific Navigation Company expired in the latter part of 1915. Subsequently, and until about the middle of 1916, the boats were operated under a working agreement which was not satisfactory, and in July, 1916, an agreement was made between the Metropolitan Steamship Company of New Jersey and the Pacific Alaska Company for the operating of the steamers under an agreement which it is insisted is of the utmost advantage to the creditors and stockholders of the Metropolitan Steamship Company of New Jersey. This contract was arranged by Robbins. The Metropolitan Steamship Company of New Jersey is now in the control of directors who are under the absolute domination of Robbins and Chase, who are one. It is insisted by the defendants that the operations of the company from 1910 on has resulted in a large decrease in the debt, and that there is no reason at this time for the inter-

vention of this Court. That there has been a decrease in the debt of the company there is no doubt. The bonds have been reduced from $3,000,000 to $1,578,000; demand notes of $500,000 have been paid; the ten year notes have been reduced from $1,500,000 to $1,425,291.78. Upon paper the liabilities have decreased from $7,000,000 as of November 15, 1909, to $5,695,532.49 as of December 31, 1916. But the pertinent question arises as to who got the benefit of this reduction in liabilities. Robbins did to a much greater extent than anyone else. He has succeeded in taking out in preference to every other bondholder and every other creditor the money that it was said was used to finance the purchase from the Assets Company, and he still holds a very large amount of the securities of the company, besides, through Chase, almost the entire capital stock. He has done this by a consistent exercise of his power as the controlling influence in the corporation. As against the debt of $5,659,532.49 there are assets according to the statements of the auditor of $5,659,532.49, but there is included in this item of assets "cost of property of $5,411,291.78." The item "cost of property" on the statement means nothing, and there has been no evidence adduced before me which will permit me to place an exact value upon the remaining property of the corporation. The excess of liabilities over assets other than ships is $3,233,555.77. This means ships alone, that is the hull, engines, etc.

If these ships do not realize at least this sum, every creditor and bondholder has been injured by the acts of Robbins. It is admitted by Chase that if there should be an

accident which would result in the destruction of either of the ships the result would be bankruptcy. I am firmly of the impression that a holder of a majority of the stock of a New Jersey corporation will not be permitted to so exercise his power as to, himself, by the use of the assets of the company, completely satisfy any claim which he may have against it, and leave the remaining creditors and stockholders with such assets only as he chooses and let them take the risk when liquidation comes. It seems to me that if Robbins has made any profit out of the transaction which resulted in the transfer of the freight boats and the wharves he may be called upon, either at the instance of creditors or stockholders, to account for that profit, upon the theory that under the circumstances he was acting as the agent of the corporation, no matter what form the transaction took; that he may be called upon to account for any damage that may be shown has been caused the creditors or stockholders by reason of his acts; that as against creditors and bondholders when he permitted himself to be paid first he committed a breach of trust, and that he may be called upon to account. Under the circumstances, if these large sums of money coming in as a result of the operation of the Harvard and Yale by the Pacific Alaska Company are paid under the terms of the second mortgage to the trustee, and by him to the holders of these second mortgage bonds, Robbins will secure a further preference unless this Court intervenes. Ought the control of the corporation to be left to this present board of directors? And if any relief is to be given, what relief would be adequate.

*Conclusions on Facts.*

Is it the duty of this Court to seize the property of the corporation upon the ground that it has practically suspended the business for which it was incorporated and has fallen into the hands of those who cannot be permitted to further control it and it is impossible to secure any other control because of the dominating stock ownership controlled by Robbins, and appoint a receiver to wind up the corporation at this time? Is there any warrant for the intervention of this Court in the internal affairs of a corporation under such circumstances as these which will permit the Court to substitute its appointees as directors in place of the present directors and continue indefinitely the business of the corporation? Can I, upon the present bill, grant the relief to which I think the creditors and stockholders are entitled?

These conclusions are for use of counsel and are not to be printed. If there is any apparent error I wish counsel would draw my attention to it.

## Opinion of Vice-Chancellor Lane.

Filed February 2, 1917.

IN CHANCERY OF NEW JERSEY.

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| *Between*<br>JENNIE R. MORSE,<br>*Complainant,*<br>*vs.*<br>METROPOLITAN STEAMSHIP COMPANY *et al.*,<br>*Defendants.* | *Newark, N. J., Friday, February 2, 1917.* |

Mr. English (Mr. Littleton, Mr. Swacker and Mr. Brown of the New York Bar) for the complainant.

Mr. Faulks and Mr. Ward for defendants.

Mr. Wickersham (of the New York Bar) for a creditor.

*CONCLUSIONS ON THE LAW.*

LANE, *V. C.* orally.

I announced yesterday that I would appoint a receiver at once, owing to what I consider to be the exigencies of the occasion. It is now stated that appeal will be taken to the Court of Errors and Appeals and as there may be a necessity for an early application to that court for *ad interim* relief I will announce my conclusions on the law at this time. Counsel for the defendant corporation has made application for a stay of the operation of the order or interlocutory decree and the application has been argued as if the

order had actually been signed. I am going to deny the application for the same reasons which induced me to act at once yesterday, induce me now to refuse to practically nullify the action I then took.

The case was fully argued and I have examined the authorities cited. I will not attempt to analyze them to any great extent. The power of a Court of Equity to appoint a receiver of a corporation, not insolvent, under certain circumstances, has been before the courts of this state in several cases and I think is clearly settled. In Benedict *vs.* Columbus Construction Company, 49 Eq. 23, the Chancellor while holding that the Court cannot dissolve a corporation or declare its franchises forfeited and extinguished except under statutory provisions, yet said that "But where it plainly appears that the object for which the company was formed is impossible of attainment, it becomes the duty of the company's agents to put an end to its operations and wind up its affairs, and should they, even though supported by a majority of the stockholders, pursue operations which *must* evidently be ruinous, any shareholder feeling aggrieved would, upon plain equitable principle be entitled to the assistance of this court, and a decree should be made compelling the directors to wind up the company's business and distribute its assets among those who are entitled to them unless they can lawfully be used for other business purposes allowed by the charter. This course is pursued in case of partnerships in similar situations and for the reasons there controlling I perceive no reason why it should not also be pursued in the case of corporations." He also said "If stockholders in a corporation dis-

approve of a company's management which is conducted without fraud or by action *ultra vires* or in gross abuse of trust, or shall consider their speculation a bad one, their remedy is to elect new officers or sell their shares and withdraw." In Einstein *vs.* Rosenfeld, 38 Eq. 309, the Chancellor, while not doubting his power to appoint a receiver did not do so under the circumstances of that case. In Avery *vs.* Bless Manufacturing Company et al., 27 Eq. 412, the Chancellor upon a bill filed for relief against fraudulent acts of a board of directors alleged to be unlawful did appoint a receiver. He said "The property must be preserved pending this litigation, and the conduct of the president and his associates in the direction has been such that they cannot be permitted to retain control of the affairs of the company." This is precisely the situation I find exists here. In Kean *vs.* Colt, 5 N. J. Eq., 365, the Chancellor while declining under the circumstances of that case to appoint a receiver yet did not doubt his power. In Laurel Springs Land Company *vs.* Fougeray, 50 Eq. 756, the Court of Errors and Appeals, reversing Vice-Chancellor Pitney who had appointed a receiver, said "The frauds of these defendants as directors of this corporation are all capable of adequate remedy and complete redress by the court within the principles of remedial and preventive equity. This being so, the court was not justified in a decree of first instance in stopping the business of a solvent company and taking possession of its affairs for the mere purpose of aiding the withdrawal of the injured party with a proportionate share of the corporate property and its increment, assuming such jurisdiction to exist in any case in the first instance."

I direct attention to the language used by the court in that case, to wit, where the wrongs are capable of *adequate* remedy and *complete* redress. In Sternberg *vs.* Wolff, 56 Eq., 396, the Court of Errors and Appeals was careful to say that that court in Fougeray *vs.* Cord, 50 Eq., 185, 756, did not deny the power of the Court of Chancery to appoint a receiver *pendente lite* for the management of the affairs of an incorporated company organized for the purposes of trade. It said "The ruling of this court was that 'the disturbance of corporate functions incident to a receivership are extreme powers, and may not be decreed by a court of equity when the specific acts complained of are capable of redress and complete restitution and those apprehended fall within the ordinary jurisdiction by injunction.'" In the last case the court cited with approval Edison *vs.* The Edison United Phonograph Co., 52 Eq. at page 620, in which case Vice-Chancellor Van Fleet had said "The power of this court to appoint a receiver of a corporation, either because it has no properly-constituted governing body or because there are dissensions in its governing body as to make it impossible for the corporation to carry on its business with advantage to its stockholders I think must be regarded as settled, but I think it is equally well settled that this power is subject to certain limitations, namely it must always be exercised with great caution and only for such time and to such an extent as may be necessary to preserve the property of the corporation and protect the rights and interests of its stockholders. As soon as a lawfully-constituted and competent governing body comes into existence, whether it is brought into existence by an adjustment of the

dissensions or by the election of a new body, and such body is ready to take possession of the property of the corporation and proceed in the proper discharge of its duties, the court must lift its hand and retire." I do not find all the circumstances under which the court may intervene has ever been definitely determined. In the nature of things they could not be. I do not find that the courts of this state have in any wise limited the general doctrine which prevails in England and throughout this country that wherever because of gross abuse of trust, because of dissensions among the members of the board of directors or the stockholders, because there is no properly constituted board, or because the company has failed of its purpose there is a necessity for judicial intervention a Court of Equity may intervene under its general jurisdiction and appoint a receiver and grant such other relief as may be necessary. The text book authorities are to the effect that the power exists but of course must be exercised with discretion. Thompson on Corporations, vol. 5,6826; Beach on Receivers, sec. 424; Machen on Corporations, vol. 2, sec. 1161; Clark and Marshall on Corporations, sec. 556; High on Receivers, 4th ed., sec. 288.

I will refer to only two of the cases from other jurisdictions cited by counsel for the complainant, because the facts are almost similar to those in the case at bar. Dupuy *vs.* The Transportation Co., Court of Appeals of Md., 33 Atl. 889; Miner *vs.* The Belle Isle Ice Company, Supreme Court of Michigan, 53 N. W., 218. In the latter case the court held that because it would be impossible to elect a proper board of directors for the reason that the control of the

majority of the stock was in the persons who had been convicted of gross fraud, the court would under its general equity power appoint a receiver and wind up the affairs of the corporation. In the case of U. S. Ship Bldg. Co. *vs.* Conkling, Circuit Court of Appeals (3rd Circuit) 126 Fed., 132, where the bill was filed alleging insolvency produced by gross mismanagement of the directors and the appointment had been made under the statute of New Jersey, the court said: "Upon the whole, we are of opinion the bill presented a case of which the circuit court sitting in equity had jurisdiction, and that the appointment of a receiver was within the authority of the court." The court struck out of the decree the provision that the appointment was under the statute and substituted therefor the words: "The receiver to be subject at all times to the orders and directions of this court" and added to the end of the order the following provision: "The foregoing order to stand until the further order of the court." That a majority of the stockholders of a corporation, no matter how large, has no right to divert to themselves assets of the company to the detriment of its creditors and stockholders, is of course settled. Keen *vs.* Johnson, 9 N. J. Eq., 401; Black *vs.* Del. & Raritan Canal Co., 24 Eq., 456; Seigman *vs.* The Electric Vehicle Co., 72 Eq., 403; Lillard *vs.* The Oil, Paint & Drug Co., 70 Eq., 197. In the latter case Vice-Chancellor Emery pointed out that although the majority of the stock of a company may vote and vote as self interest dictates, and that under ordinary circumstances the relation of trustee and *cestui que trust* does not exist, and the ordinary rules in respect to trusts is not to be applied, yet that

such power is not unlimited and that the majority of the shareholders although they may deal with the assets of the company cannot so deal with them as to divide the assets more or less between themselves to the exclusion of the minority. I think that when the majority of the stockholders of a company do act fraudulently and do attempt to divert the assets of the company to themselves to the exclusion either of a minority of the stockholders or the creditors, for all practical purposes they become trustees. Vice-Chancellor Emery again in the case of Colgate *vs.* U. S. Leather Company, 73 Eq., p. 72, after examining the authorities, said: "The general rule under our decisions is, that the individual stockholders are not trustees for each other, but each may, as a member of the general corporate body, exercise his individual right and vote equally with other stockholders on the ratification of a contract in which he is interested, and ratification or adoption of the contract is valid even though carried by his vote. * * * The right of the majority (statutory or other) either to originally direct or to affirm contracts or other proceedings in which the directors or the majority stockholders are interested is not, however, absolute but is subject to the necessary qualification that the majority, although they may deal with the assets of the company, cannot so deal with them as to divide these assets more or less, between themselves to the exclusion of the minority."

Whether this court can or will at some future time in this present suit make a decree which will have the effect of substantially winding up the corporation, dividing its assets among its creditors and stockholders, it is not now neces-

sary to decide. What I hold at this time is that the court has power under the circumstances, if there is no other complete and adequate remedy, to appoint a receiver for the purposes contemplated by the order I am about to advise.

I am willing to say that, if it were necessary to sustain the jurisdiction of this court upon the present bill I would, as presently advised, hold that this court may, if circumstances indicate that the corporation cannot properly be conducted by reason of the fact that no competent, proper board of directors can ever be elected under its general equity power, actually wind up the corporation and divide its assets.

The question then is whether the court should exercise this drastic power. I am firmly convinced that there is no way by which the court can give the complainants the relief to which I think they are entitled, which will be complete and adequate under the case of Fougeray *vs.* Cord, except by the appointment of a receiver. The circumstances in this case and in that are different. In the present case the fraud which was practiced was contemplated prior to the incorporation of the company, it was the design before the company was formed to divert to the majority of the stock, in the guise of creditors, sufficient at least of the assets of the company to repay to the majority of the stock that which that majority paid for its interest in the corporation both as creditors and stockholders. The remaining creditors and the stockholders who had received their interest in the company as a part of a reorganization scheme must have contemplated from the very terms of the plan that the company was to actually operate the freight boats and the Harvard and Yale, the only

assets. The majority of the stock contemplated that the company should completely, or practically at least, abandon its business, selling its freight boats and wharves in the interest of the majority and sending the Harvard and Yale to the Pacific Coast. The scheme was carried out and by the latter part of 1910, after the corporation had been in existence for less than a year, its business was practically discontinued. In this case we have a situation where the fraud was contemplated prior to incorporation and has been consistently carried down to the present time. During all this period the corporation has been in the control of directors who had no financial interest and who were and still are the dummies of Edward D. Robbins. The court is now asked to permit these directors to remain in control of this company pending the institution of litigation which should be brought and the investigation which should be made of its affairs. It is suggested that the court may direct the directors to aid and assist the complainants in bringing such a suit and that the books and papers of the company may be made available. I cannot conceive that the court can by the power of its injunction grant any adequate relief. The history of this case shows to what extent the complainants or anyone investigating the affairs of the company can expect assistance from the directors. Weeks have been spent in the trial. No information was given to the complainants who were stockholders and creditors; each bit of information had to be drawn out piece by piece; enormous expense has undoubtedly been put upon the corporation in defending this suit in the interest of Robbins. All of this would have been unnecessary if a

frank disclosure of what had been done had been made in the beginning. It is not a case where there is a real dispute as to the facts or as to what actually took place. I can conceive, of course, the directors opposing this suit to the uttermost of their power if there was a substantial dispute as to what had been done. The court could have immediately upon the disclosure of the facts determined under the law whether they amounted to fraud. What the defendants did was to have put the complainants to as much trouble as possible in getting at practically admitted facts. I do not consider that directors who have acted in this way are in any position to ask me to permit them to remain in charge. I draw no distinction between the present directors, who were elected last year, and those who preceded them; they are all dummies and all take their orders from Chase or Robbins. None of the assets are in this state nor are any of the present directors residents of this state, or parties to this suit; there are none subject to the jurisdiction of this court except only as they may be directors of the Metropolitan Steamship Company. Pending this suit the directors who were parties have been supplanted by three others, non-residents. If this company was an operating concern, whose business might be hurt by the appointment of a receiver, there would be, of course, a further argument against any hasty action by this court. It is not. Its only function at the present time is to receive the rents from the Harvard and Yale, which are under a five-year lease on the Pacific coast, and pay such debts as may incidentally accrue. There is no discretion to be exercised. The directors have effectively foreclosed themselves from exercising

any discretion. Whatever the directors of this company might do can as well be done by a receiver. It is stated that the appointment of a receiver may result in a foreclosure of the first mortgage. An order to show cause was made upon all parties interested, returnable here, and a large proportion of the first mortgage bondholders approved the appointment of a receiver. None appeared opposing. The self interest of the bondholders would, I think, prevent them from foreclosing. In any event, balancing the possibilities of such a foreclosure with, to my mind, the certainty of denying adequate and complete relief without the appointment of a receiver, I have come to the conclusion to appoint a receiver.

The Court was asked by one of the creditors represented by Mr. Wickersham to delay the appointment of a receiver until certain negotiations, which counsel say have been brought to his attention and which are said to be in progress in New York, are completed. These negotiations are said to be for a settlement of the controversy, a reorganization of the company, or something of that nature. Reading between the lines and considering the testimony of Mr. Reid I am of the opinion that since the conclusions on the facts in this case were handed down there have been attempts made to obtain a settlement. Mr. Reid testifies that these attempts went so far that Mr. Galen Stone, of Boston, threatened him in New York a few days ago that a receivership here would get them nothing, because a plan already was in contemplation to appoint a receiver in California at the instance of second mortgage bondholders. Part of this issue, at least, I have held ought not to have been made. It was stated

by Mr. Stone that Mr. Robbins no longer owned the second mortgage bonds; this undoubtedly was for the purpose of indicating that no relief that could be given by this court would be effective because the bonds had gotten into the hands of bona fide holders for value. The fact that these negotiations are pending, that such threats have been made (no application was made to me to permit the examination of Mr. Stone to refute the testimony of Mr. Reid) is an indication of the necessity of an immediate action by this court. There are parties involved who have not appeared, stockholders and creditors, and no settlement between the parties to this litigation, under the circumstances, should be made except under the eye of the court. The last hold that this court had upon the corporation consisted of the fact that prior to the last year it had a New Jersey director. Last year, in view of the statute, this director was supplanted by a person resident without the state and an entire set of new directors were elected, so that whatever hold this court had upon them as parties to the suit, went. The only opposition to the appointment of a receiver comes from the corporation itself, and inasmuch as I have held that the corporation is governed by Robbins, that opposition must be assumed to come from Robbins and is in his interest. In view of this fact I do not think that very much weight should be given to it. Now with respect to the application for a stay, precisely the same reasons which influence me now to appoint a receiver influences me to deny the stay. There has been no assurance given to the court that the statement of Mr. Reid, that Mr. Stone made the threat is untrue, or that the plan he spoke of

was not in contemplation. I assume counsel is not to be expected to make any such assurance. If I should grant a stay, proceedings may be taken in courts of other jurisdictions and before this court or the Court of Errors and Appeals could act much harm may be done. On the other hand I can see no harm that can come to the corporation at this time by permitting the receiver to go into possession. It is only by the appointment of a receiver that I can protect the creditors and stockholders. To merely permit the injunctions to remain in force is not sufficient. I cannot enforce them if violated. The corporation is not operating, its business will not be disturbed; the only thing that the receiver will do will be to go into actual physical possession of the property; that means simply the money and the books; he is not to interfere with the operation of the Harvard and Yale, and I am at a loss to imagine any possible injury that can be done. With respect to the expense, the receiver will, of course, keep in close touch with the court and I can as well control this during the interim before the Court of Errors and Appeals will act without a stay as with one. I do not intend, of course, if there is an appeal taken, to have investigations started that are going to cost thousands of dollars, or suit commenced that may lead to interminable litigation and to a great deal of expense before the action of the Court of Errors and Appeals. I think that the complainants should, and I direct them to do everything in their power to facilitate a hearing and determination of this case by the Court of Appeals.

## Order for Injunction.

Filed January 18, 1917.

IN CHANCERY OF NEW JERSEY.

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|---|---|
| *Between*<br>JENNIE R. MORSE, *et al.*,<br>*Complainants,*<br>*and*<br>METROPOLITAN STEAMSHIP COMPANY, *et al.*,<br>*Defendants.* | *On Bill, etc.*<br>*Order for Injunction.* |

Application having been made at the conclusion of the argument, and upon the evidence taken in the case for an order restraining the defendant Metropolitan Steamship Co. from paying out its moneys; and counsel having been heard in support of and in opposition to the motion; and the Court being of opinion that the said application should be granted, as to Edward D. Robbins, Warren D. Chase, The Pacific Company, a corporation, the holders of any second mortgage bonds or the officers and directors of said company;

It is thereupon Ordered, on this 18th day of January, 1917, on motion of McCarter & English, solicitors for and of counsel with the complainants, that the defendant Metropolitan Steamship Company, its officers, attorneys and agents, be and they are enjoined and restrained from paying out of the funds or moneys of the said company, any money to Edward D. Robbins, Warren D. Chase, The Pacific Company, a cor--

poration, the holders of any second mortgage bonds of the said defendant company, or any officers or directors of said company for salaries or services until the further order of the Court.

E. R. WALKER.
*C.*

Respectfully advised,

MERRITT LANE,
*V. C.*

## Order Admitting Newbert and Noyes as Parties.

Filed January 20, 1917.

Upon reading and filing the duly verified petition of Elmer E. Newbert and Reuel J. Noyes, and it appearing therefrom that the said petitioner Elmer E. Newbert is the owner and holder for value of two certain promissory notes of the defendant Metropolitan Steamship Company, numbered 519 and 526 respectively, and each for $2,000., dated November 15th, 1909, and that the petitioner Reuel J. Noyes is the owner and holder for value of eight certain promissory notes of the defendant Metropolitan Steamship Company, numbered 527 to 534 inclusive, and each for $1,000., and dated November 15th, 1909, and it appearing that the said petitioners adopt the allegations made in the amended bill of complaint, and are willing to be bound by all the proceedings that have heretofore taken place in this suit, and that they pray that they may be made co-complainants herein, and it further

appearing that notice of this application has been given, and counsel having been heard in support of and in opposition to said application, and the Court being of opinion that the said application should be granted;

It is thereupon on this 18th day of January, 1917, on motion of McCarter & English, solicitors for and of counsel with said petitioners, ORDERED that Elmer E. Newbert and Reuel J. Noyes be and they are hereby admitted as parties complainant to this suit, and allowed to appear and aid in the prosecution thereof.

And it is further ORDERED that the said petitioners be and they are bound by all the proceedings that have heretofore taken place in this suit.

Respectfully advised,

MERRITT LANE,
*V. C.*

## Further Order of Restraint.

Filed January 25, 1917.

We certify this to be a true copy of the original.

McCARTER & ENGLISH,
*Solicitors of Complainant.*

The Court having heretofore, and on the 18th day of January, 1917, made its order in this cause restraining the defendant Metropolitan Steamship Company from paying out any moneys to Edward D. Robbins, Warren D. Chase, the Pacific Company, the holders of the second mortgage bonds, or to the officers or

directors for salaries or expenses, until the further order of the Court, and application now being made for a further restraint against the said defendant company from holding any meetings of its stockholders or directors, and also impounding the books and papers of the said defendant company now in the possession of its solicitor, Frederic J. Faulks, Esq.

It is thereupon on this 25th day of January, 1917, on motion of McCarter & English, solicitors of the complainants, ORDERED, that the said Metropolitan Steamship Company, its officers, agents and attorneys, be and they are hereby restrained from holding any meeting or meetings of stockholders or directors, either within or without the State of New Jersey, until the further order of the Court.

And it is FURTHER ORDERED that all books, papers and documents of every kind and character, belonging to the said defendant company, now in the possession of its solicitor, Frederic J. Faulks, Esq., be and they are hereby impounded in his possession until the further order of the Court.

Respectfully advised,

MERRITT LANE,
*V. C.*

## Order Appointing Receiver.

Filed February 3, 1917

This matter having come on for hearing upon bill, answers and replications, in the presence of Conover English, Esq., and Owen N. Brown, Esq., of the New York Bar, and Frank M. Swacker, Esq. of the Washington Bar, of counsel with the complainants, and Frederic J. Faulks, Esq., of counsel with the defendants Metropolitan Steamship Company, a corporation, Engelke, Martinsen and Hughes, and Waldron M. Ward, Esq., of counsel with the defendant Pacific Navigation Company, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having considered the pleadings, proofs and arguments, and it appearing to the Court that the allegations of the bill of complaint have been proved to the extent necessary to require the relief herein granted, and that the complainants are entitled to relief, and that a receiver for the defendant Metropolitan Steamship Company should be appointed under the general equity power of the Court to appoint a receiver, no adjudication of insolvency at this time being made;

It is thereupon on this second day of February, 1917, on motion of McCarter & English, solicitors for the complainants, ORDERED, ADJUDGED AND DECREED as follows:

1. That Edward M. Colie, Esq., be and he hereby is appointed receiver of the defendant Metropolitan Steamship Company, and of all its properties and assets of every character and description wheresoever situate, with full power

to demand, sue for, collect and receive, and take into his possession all the goods, chattels, rights and credits, moneys and elects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description wheresoever situate, belonging to the said Metropolitan Steamship Company, or to which it may be entitled.

2. That the said receiver be and he hereby is authorized and empowered until the further order of the Court, to take control of the said Metropolitan Steamship Company, and manage and direct its business, and to conduct and continue to conduct the business of the said Metropolitan Steamship Company, without interruption, until the further order of the Court in the premises, and to make payment out of the income and profits of moneys, assets and effects from time to time coming into his hands as such receiver, of such expenses as may be necessary for the purpose aforesaid including the payment of first mortgage interest and sinking fund requirement and to employ and pay all needful agents, servants and generally to do all acts and things proper or necessary to be done to protect the property and rights of which he is hereby appointed receiver, for the benefit of the creditors and stockholders of the said company, with leave to apply from time to time, whenever necessary and as he may be advised, for instructions touching all and singular his rights and liabilities in the premises.

3. That the said receiver be and he is hereby authorized and directed to investigate the condition of the affairs of the said Metropolitan Steamship Company, and to report to the Court,

according to the condition in which its affairs shall be found.

4. That meanwhile and until further order of the Court the said receiver shall not interfere with the operation of the steamships Harvard and Yale, under a certain lease or operating agreement with the Pacific Alaska Navigation Company, entered into between the Metropolitan Steamship Company of the first part, and Pacific Alaska Navigation Company of the second part, and dated the 31st day of August, 1916, so long as the said Pacific Alaska Navigation Company pays to the receiver the rent reserved by said lease, and keeps and fulfills all the conditions of said lease.

5. That the said receiver be and he hereby is authorized and empowered to institute such suit or suits, action or actions, in such manner and in such courts, as he may be advised, for the purpose of recovering such of the ships, wharves and other assets of the defendant Metropolitan Steamship Company as may have been wrongfully or improperly diverted by the parties in control of the said company since its incorporation; for the purpose of recovering such damages as the said Metropolitan Steamship Company may have suffered by reason of the manipulations and mismanagement of its affairs by the parties in control of said company since its incorporation; for the purpose of recovering such profit as may have been made by the parties in control of the said company since its incorporation out of the transactions concerning its physical property and securities; for the purpose of securing an accounting for such profits as have been made out of said transactions; for

the purpose of setting aside a certain second mortgage made by the Metropolitan Steamship Company to Alfred C. Greening, Trustee, and dated the 10th day of October, 1910, given to secure second mortgage bonds of the said Metropolitan Steamship Company, and the bonds still outstanding secured thereby; and generally, in addition to the foregoing specified powers, the said receiver is hereby authorized and empowered to institute any action or actions, suit or suits, in law or in equity, in any court or courts, and in any jurisdiction, against any corporation whatsoever or any person whomsoever, to protect or recover any property whatsoever, to which the said Metropolitan Steamship Company may be entitled, or to recover any damage to which the said Metropolitan Steamship Company may be entitled, or to enforce any right or rights of the said Metropolitan Steamship Company.

6. That the said receiver give bond to the Chancellor in the sum of $100,000 to be approved by any one of the special masters of this Court, conditioned that he will faithfully perform the duties of his office, and account for all moneys and properties which may come into his hands, and abide by and perform all things which he may be directed by the court to do.

7. That the said receiver be and he is hereby authorized to employ counsel, (to be approved by the Court.)

8. That the said receiver forthwith take into his possession all of the property and assets of the said defendant Metropolitan Steamship Company, and account for the same as the Court shall hereafter direct, and that the said de-

fendant Metropolitan Steamship Company, its officers, directors and agents, forthwith assign, transfer, convey and deliver to the said receiver, all of the property and assets of the said corporation, both real and personal, wheresoever situate and of whatsoever it may consist, including all and any cash which may now be on hand, or may hereafter be received by said Metropolitan Steamship Company, or any of its officers, directors or agents, and including the books of the said company, now impounded in the possession of Frederic J. Faulks, Esq., together with any and all other books and papers and documents of the said company, wherever they may be located, or in whosever possession they may be.

9. That the said defendant Metropolitan Steamship Company, its officers, directors and agents, and all persons claiming under it or them, be and they hereby are restrained from interfering with the said receiver's taking possession of and managing said property.

10. That the said defendant Metropolitan Steamship Company, its officers, directors and agents be and they hereby are, until the further order of the Court, enjoined and restrained from exercising any of the rights, privileges and franchises of the said Metropolitan Steamship Company, and that the said receiver be and he hereby is authorized and empowered to use and exercise the said franchises, rights and privileges of the said Metropolitan Steamship Company to the extent necessary to carry out the provisions of this order.

11. That the said defendant Metropolitan Steamship Company, its officers, directors and agents, be and they hereby are restrained from

paying out any moneys to Edward D. Robbins, Warren D. Chase, the Pacific Company, the holders of the second mortgage bonds, or to the officers or directors of said company for salaries or expenses, until the further order of the Court, and the said receiver is likewise directed to refrain from paying out any moneys to the said persons for any of the aforesaid purposes, except as authorized by the Court.

12. That the said receiver have leave from time to time to apply to the Court for such orders or directions as he may think proper, and further that on five days' notice to counsel of the defendants, he have leave to apply to the Court for the appointment of a co-receiver if in his judgment such appointment shall be necessary or desirable.

13. Any party hereto as may apply to the Court, upon one day's notice to the parties hereto, to modify this order, or for instructions or for any relief whatever.

14. The receiver may pay any legitimate debt of the corporation.

E. R. WALKER,
*C.*

Respectfully advised,

MERRITT LANE,
*V. C.*

## Order Appointing Receiver Under the Statute.

Filed February 15, 1917.

This matter being opened to the Court by Conover English, of counsel with the complainants, and the bill of complaint herein having been amended, and there having been presented a report of the receiver heretofore appointed herein, and the petition of the complainants, with affidavit annexed, and the Court being satisfied that the business of the company has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, and that it is necessary that the injunction provided for by the statute, "An Act Concerning Corporations, (Revision of 1896)," should go, and that a receiver under such statute should be appointed, and that under the circumstances of this case no notice should be given to the corporation or any of its creditors or stockholders prior to the making of the order now made, (no adjudication of insolvency is made;)

It is thereupon on this 15th day of February, 1917, on motion of McCarter & English, solicitors of the complainants, Ordered, Adjudged and Decreed that the business of the Metropolitan Steamship Company has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders.

And it is further Ordered, Adjudged and Decreed that the said corporation, and its officers and agents, do desist and refrain from exercising any of its privileges or franchises, and

from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by this Court, until this Court shall otherwise order.

And it is further Ordered that Edward M. Colie, Esq., of Newark, be and he is hereby appointed receiver of the said corporation under the provisions of "An Act Concerning Corporations, (Revision of 1896)," and its supplements and amendments, with all the duties and powers conferred upon such receiver by such act.

And it is further Ordered that the said receiver have full power and authority to demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsible at law or in equity to the corporation, upon such terms and in such manner as he shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any persons to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity; a debtor who shall have in good faith paid his debt to corporation shall not be liable therefor, and the receiver shall have power to sell, convey and assign all the said estate, rights

and interests, and shall hold and dispose of the proceeds thereof under the directions of the Court of Chancery. This precise enumeration of powers shall in no sense limit the general powers given by the act.

And it is further Ordered that in accordance with the provisions of the statute all the real and personal property of said corporation, wheresoever situated, and all of its franchises, rights, privileges and effects forthwith vest in the said receiver, and the said corporation is divested of the title thereto.

And it further appearing that the receiver is now under a bond of $100,000, and that no additional bond is at this time necessary.

It is Ordered that the receiver need not at this time give a further or substituted bond, and application may be made at any time to that end.

And it is further Ordered that the said corporation, its creditors and stockholders, show cause before the Chancellor, at Chancery Chambers in the Prudential Building in the City of Newark, on Tuesday, the 6th day of March, 1917, at ten o'clock in the forenoon, if any cause they have why this order should be vacated or modified, or why a change should be made in the personnel of the receiver, and leave is given to them to apply at such time for any relief that they may be advised they should have; copies of this order, which need not be certified, shall be served upon the agent of the corporation within this State and mailed to such of the creditors and stockholders whose

addresses are shown to the receiver, within seven days from the date hereof.

E. R. WALKER,
*C.*

Respectfuly advised,

MERRITT LANE,
*V. C.*

## Order Continuing Receiver.

Filed March 7, 1917.

An order having been made in this matter on the 15th day of February, 1917, appointing Edward M. Colie receiver under the statute of the defendant Metropolitan Steamship Company, and further ordering that the creditors and stockholders of the said corporation show cause before the Chancellor, at the Chancery Chambers in the Prudential Building in the City of Newark, on Tuesday the 6th day of March, 1917, at ten o'clock in the forenoon, if any cause they had why the said order should be vacated or modified or why a change should be made in the personnel of the receiver, and leave being in said order given to them to apply at such time for any relief that they might be advised they should have;

And it appearing that copies of the said order were served upon the agent of the said corporation within this State, and mailed to the creditors and stockholders whose addresses are known to the receiver, as required by the terms of the said order, and application now being made, and no sufficient cause to the contrary being shown; no one appearing except Linda-

bury, Depue & Faulks for the defendant company objecting, but stating no grounds.

It is Ordered on this 6th day of March, 1917, on motion of McCarter & English, solicitors of the complainants, that the appointment of Edward M. Colie, Esq., as receiver of the Metropolitan Steamship Company be and it is hereby confirmed, and that he be continued as receiver of the said Metropolitan Steamship Company under the provisions of an act, entitled "An Act Concerning Corporation, (Revision of 1896)," and its supplements and amendments, with all the powers and duties conferred upon such receiver by said act, and by the said order of the Court made on the 15th day of February, 1917.

Respectfuly advised,

MERRITT LANE,
*V. C.*

## Notice of Appeal from Order for Injunction.

Filed February 24, 1917.

IN CHANCERY OF NEW JERSEY.

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|---|---|
| *Between*<br>JENNIE R. MORSE, *et al.*,<br>*Complainants,*<br>*and*<br>METROPOLITAN STEAMSHIP COMPANY, *et al.*,<br>*Defendants.* | *On Bill, etc.*<br>*Notice of Appeal.* |

Metropolitan Steamship Company, one of the defendants herein, hereby appeals from the order for injunction made in this Court in the above stated cause on the 18th day of January, 1917, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

LINDABURY, DEPUE & FAULKS,
*Solicitors for Defendant*
*Metropolitan Steamship Company.*

Dated February 23d, 1917.

I conceive that there is good cause for appeal in the above stated cause.

FREDERIC J. FAULKS,
*Of counsel with defendant*
*Metropolitan Steamship Company.*

## Notice of Appeal from Order Admitting Newbert and Noyes as Parties.

Filed February 24, 1917.

Metropolitan Steamship Company, one of the defendants herein, hereby appeals from the interlocutory order or decree made in this Court in the above stated cause on the 18th day of January, 1917, admitting Elmer E. Newbert and Reuel J. Noyes as parties complainant to this suit and allowing them to appear and aid in the prosecution thereof, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

LINDABURY, DEPUE & FAULKS,
*Solicitors for defendant*
*Metropolitan Steamship Company.*

Dated February 23d, 1917.

I conceive that there is good cause for appeal in the above stated cause.

FREDERIC J. FAULKS,
*Of counsel with defendant*
*Metropolitan Steamship Company.*

## Notice of Appeal from Further Order of Restraint.

Filed February 24, 1917.

Metropolitan Steamship Company, one of the defendants herein, hereby appeals from the further order of restraint made in this Court in the above stated cause on the 25th day of January, 1917, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

LINDABURY, DEPUE & FAULKS,
*Solicitors for defendant*
*Metropolitan Steamship Company.*

Dated February 23d, 1917.

I conceive that there is good cause for appeal in the above stated cause.

FREDERIC J. FAULKS,
*Of counsel with defendant*
*Metropolitan Steamship Company.*

## Notice of Appeal from Order Appointing Receiver.

Filed February 24, 1917.

Metropolitan Steamship Company, one of the defendants herein, hereby appeals from the interlocutory order or decree made in this Court in the above stated cause on the second day of February, 1917, appointing a receiver for said defendant and enjoining the said defendant and others in the said cause, and from the whole and every part of the said order or decree, to

New Jersey State Library

the Court of Errors and Appeals in the last resort in all causes.

LINDABURY, DEPUE & FAULKS,
*Solicitors for defendant*
*Metropolitan Steamship Company.*

Dated February 23d, 1917.

I conceive that there is good cause for appeal in the above stated cause.

FREDERIC J. FAULKS,
*Of counsel with defendant*
*Metropolitan Steamship Company.*

## Notice of Appeal from Order Appointing Receiver Under Statute.

Filed March 24, 1917.

Metropolitan Steamship Company, one of the defendants herein, hereby appeals from the order appointing receiver under the statute made in this Court in the above stated cause on the 15th day of February, 1917, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

LINDABURY, DEPUE & FAULKS,
*Solicitors for defendant*
*Metropolitan Steamship Company.*

Dated March 22, 1917.

I conceive that there is good cause for appeal in the above stated cause.

FREDERIC J. FAULKS,
*Of counsel with defendant*
*Metropolitan Steamship Company.*

Service of the within Notice of Appeal is hereby acknowledged this 22d day of March, 1917.

McCARTER & ENGLISH,
*Solicitors of Complainant.*

## Notice of Appeal from Order Continuing Receiver.

Filed March 24, 1917.

Metropolitan Steamship Company, one of the defendants herein, hereby appeals from the order continuing the receiver made in this Court in the above stated cause on the 6th day of March, 1917, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

LINDABURY, DEPUE & FAULKS,
*Solicitors for defendant*
*Metropolitan Steamship Company.*

Dated March 22, 1917.

I conceive that there is good cause for appeal in the above stated cause.

FREDERIC J. FAULKS,
*Of counsel with defendant*
*Metropolitan Steamship Company.*

Service of the within Notice of Appeal is hereby acknowledged this 22d day of March, 1917.

McCARTER & ENGLISH,
*Solicitors of Complainant.*

## Petition of Appeal from Order for Injunction.

Filed March 14, 1917.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| *Between* | |
| JENNIE R. MORSE, *et al.*, *Complainants-Appellees,* | *On Bill, etc.* |
| *and* | *Petition of Appeal.* |
| METROPOLITAN STEAMSHIP COMPANY, *Defendant-Appellant.* | |

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

The petition of Metropolitan Steamship Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a certain order for injunction made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 18th day of January, 1917, wherein Jennie R. Morse, George A. Fernold, Oliver E. Williams, William A. Mossman, Elmer E. Newbert and Reuel J. Noyes were complainants and the said Metropolitan Steamship Company, a corporation of the State of New Jersey, Adolph L. Engelke, Rodney T. Martinsen, Thomas C. Hughes and Pacific Navigation Company, a corporation of the State of New Jersey, were defendants, in this respect, to wit: that the said order for injunction orders that the defendant Metropolitan Steamship Company, its officers, attorneys and agents, be and they were thereby

enjoined and restrained from paying out of the funds or moneys of the said company, any money to Edward D. Robbins, Warren D. Chase, the Pacific Company, a corporation, the holders of any second mortgage bonds of the said defendant company, or any officers or directors of said company for salaries or services until further order of the said Court.

And your petitioner humbly appeals from the whole of said order of the Chancellor which orders as aforesaid upon the ground that the same is erroneous for that the said defendant Metropolitan Steamship Company, its officers, attorneys and agents ought not to be enjoined and restrained from paying out of the funds or moneys of the said company, any money to Edward D. Robbins, Warren D. Chase, The Pacific Company, a corporation, the holders of any second mortgage bonds of the said defendant company, or any officers or directors of said company for salaries or services until the further order of the Court.

Your petitioner therefore prays that the said order of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

LINDABURY, DEPUE & FAULKS,
*Solicitors for and of counsel with appellant Metropolitan Steamship Company.*

## Petition of Appeal from Order Admitting Newbert and Noyes as Parties.

Filed March 14, 1917.

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

The petition of Metropolitan Steamship Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by an interlocutory order or decree made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 18th day of January, 1917, wherein Jennie R. Morse, George A. Fernold, Oliver E. Williams, William A. Mossman, Elmer E. Newbert and Reuel J. Noyes were complainants and the said Metropolitan Steamship Company, a corporation of the State of New Jersey, Adolph L. Engelke, Rodney T. Martinsen, Thomas C. Hughes and Pacific Navigation Company, a corporation of the State of New Jersey, were defendants, in this respect, to wit: that the said interlocutory order or decree orders and adjudges that Elmer E. Newbert and Reuel J. Noyes be any they thereby were admitted as parties complainant to this suit and allowed to appear and aid in the prosecution thereof.

And your petitioner humbly appeals from that part of said order or decree of the Chancollor which orders as aforesaid upon the ground that the same is erroneous for that the said Elmer E. Newbert and Reuel J. Noyes ought not to be admitted as parties complainant to this suit and allowed to appear and aid in the prosecution thereof.

Your petitioner therefore prays that the said order or decree of the Chancellor may be in the

particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

LINDABURY, DEPUE & FAULKS,
*Solicitors for and of counsel with appellant Metropolitan Steamship Company.*

## Petition of Appeal from Further Order of Restraint.

Filed March 14, 1917.

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

The petition of Metropolitan Steamship Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a further order of restraint made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 25th day of January, 1917, wherein Jennie R. Morse, George A. Fernold, Oliver E. Williams, William A. Mossman, Elmer E. Newbert and Reuel J. Noyes were complainants and the said Metropolitan Steamship Company, a corporation of the State of New Jersey, Adolph L. Engelke, Rodney T. Martinsen, Thomas C. Hughes and Pacific Navigation Company, a corporation of the State of New Jersey, were defendants, in this respect to wit: that the said further order of restraint orders that the said Metropolitan Steamship Company, its officers, agents and attorneys, be and they thereby were restrained from holding any meeting or meetings of stockholders or directors, either within

or without the State of New Jersey, until the further order of the said Court of Chancery, and that all books, papers and documents of every kind and character, belonging to the said defendant company then in the possession of its solicitor, Frederic J. Faulks, Esq., be and they were thereby impounded in his possession until the further order of this Court.

And your petitioner humbly appeals from the whole of said order of restraint of the Chancellor which orders as aforesaid upon the ground that the same is erroneous for that the said Metropolitan Steamship Company, its officers, agents and attorneys, ought not to be restrained from holding any meeting or meetings of stockholders or directors, either within or without the State of New Jersey, until the further order of said Court of Chancery, and that all books, papers and documents of every kind and character belonging to the said defendant company, then in the possession of its solicitor, Frederic J. Faulks, Esq., ought not to be impounded in his possession until the further order of the Court.

LINDABURY, DEPUE & FAULKS,
*Solicitors for and of counsel with appellant Metropolitan Steamship Company.*

## Petition of Appeal from Order Appointing Receiver.

Filed March 14, 1917.

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

The petition of Metropolitan Steamship Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by an interlocutory order or decree made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 2nd day of February, 1917, wherein Jennie R. Morse, George A. Fernold, Oliver E. Williams, William A. Mossman, Elmer E. Newbert and Reuel J. Noyes were complainants and the said Metropolitan Steamship Company, a corporation of the State of New Jersey, Adolph L. Engelke, Rodney T. Martinsen, Thomas C. Hughes and Pacific Navigation Company, a corporation of the State of New Jersey, were defendants, in this respect to wit: that the said order or decree adjudges that Edward M. Colie be and he thereby was appointed receiver of the defendant Metropolitan Steamship Company, and of all its properties and assets of every character and description wheresoever situate, with full power to demand, sue for, collect and receive, and take into his possesion all the goods, chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description wheresoever situate, belonging to the said Metropolitan Steamship Company, or to which it might be entitled; that the said receiver be and he thereby was authorized and empowered until the further order of

the court to take control of the said Metropolitan Steamship Company, and manage and direct its business, and to conduct and continue to conduct the business of the said Metropolitan Steamship Company, without interruption, until the further order of the Court in the premises, and to make payment out of the income and profits of moneys, assets and effects from time to time coming into his hands as such receiver, of such expenses as might be necessary for the purposes aforesaid, including the payment of first mortgage interest and sinking fund requirement and to employ and pay all needful agents, servants and generally to do all acts and things proper or necessary to be done to protect the property and rights of which he was thereby appointed receiver, for the benefit of the creditors and stockholders of the said company, with leave to apply from time to time whenever necessary and as he might be advised, for instructions touching all and singular his rights and liabilities in the premises; that the said receiver be and he thereby was authorized and directed to investigate the condition of the affairs of the said Metropolitan Steamship Company, and to report to the Court, according to the condition in which its affairs should be found; that meanwhile and until the further order of the Court the said receiver should not interfere with the operation of the steamships Harvard and Yale, under a certain lease or operating agreement with the Pacific Alaska Navigation Company, entered into between the Metropolitan Steamship Company of the first part, and Pacific Alaska Navigation Company of the second part, and dated the 31st day of August, 1916, so long as the said Pacific Alaska Navi-

gation Company paid to the receiver the rent reserved by said lease, and kept and fulfilled all the conditions of said lease; that the said receiver be and he thereby was authorized and empowered to institute such suit or suits, action or actions, in such manner and in such courts as he might be advised, for the purpose of recovering such of the ships, wharves and other assets of the defendant Metropolitan Steamship Company as might have been wrongfully or improperly diverted by the parties in control of the said company since its incorporation; for the purpose of recovering such damages as the said Metropolitan Steamship Company might have suffered by reason of the manipulations and mismanagement of its affairs by the parties in control of said company since its incorporation; for the purpose of recovering such profit as might have been made by the parties in control of the said company since its incorporation out of the transactions concerning its physical property and securities; for the purpose of securing an accounting for such profits as have been made out of said transactions; for the purpose of setting aside a certain second mortgage made by the Metropolitan Steamship Company to Alfred C. Greening, trustee, and dated the 10th day of October, 1910, given to secure second mortgage bonds of the said Metropolitan Steamship Company, and the bonds still outstanding secured thereby; and generally, in addition to the foregoing specified powers, the said receiver was thereby authorized and empowered to institute any action or actions, suit or suits, in law or in equity, in any court or courts, and in any jurisdiction, against any corporation whatsoever, to which the said Metropolitan Steamship Company might be entitled, or to recover any

damage to which the said Metropolitan Steamship Company might be entitled, or to enforce any right or rights of the said Metropolitan Steamship Company; that the said receiver give bond to the Chancellor in the sum of $100,000 to be approved by any one of the special masters of this Court, conditioned that he would faithfully perform the duties of his office and account for all moneys and properties which might come into his hands, and abide by and perform all things which he might be directed by the Court to do; that the said receiver be and he thereby was authorized to employ counsel to be approved by the Court; that the said receiver should forthwith take into his possession all of the property and assets of the said defendant Metropolitan Steamship Company and account for the same as the Court should thereafter direct and that the said defendant Metropolitan Steamship Company, its officers, directors and agents, should forthwith assign, transfer, convey and deliver to the said receiver, all of the property and assets of the said corporation, both real and personal, wheresoever situate and of whatsoever it might consist, including all and any cash which might then be on hand, or might thereafter be received by said Metropolitan Steamship Company, or any of its officers, directors or agents, and including the books of the said company, then impounded in the possession of Frederic J. Faulks, Esq., together with any and all other books and papers and documents of the said company, wherever they might be located, or in whosoever's possession they might be; that the said defendant Metropolitan Steamship Company, its officers, directors and agents, and all persons claiming

under it or them, be and they thereby were restrained from interfering with the said receiver's taking possession of and managing said property; that the said defendant Metropolitan Steamship Company, its officers, directors and agents be and they thereby were until the further order of the Court, enjoined and restrained from exercising any of the rights, privileges and franchises of the said Metropolitan Steamship Company, and that the said receiver be and he thereby was authorized and empowered to use and exercise the said franchises, rights and privileges of the said Metropolitan Steamship Company to the extent necessary to carry out the provisions of this order; that the said defendant Metropolitan Steamship Company, its officers, directors and agents, be and they thereby were restrained from paying out any moneys to Edward D. Robbins, Warren D. Chase, the Pacific Company, the holders of the second mortgage bonds, or to the officers or directors of said company for salaries or expenses, until the further order of the Court, and the said receiver was likewise directed to refrain from paying out any moneys to the said persons for any of the aforesaid purposes, except as authorized by the Court; that the said receiver should have leave from time to time to apply to the Court for such orders or directions as he might think proper, and further that on five days' notice to counsel of the defendants, he should have leave to apply to the Court for the appointment of a co-receiver if in his judgment such appointment should be necessary or desirable; that any party thereto might apply to the Court, upon one day's notice to the parties thereto, to modify this order, or for instructions or for any

relief whatever; that the receiver might pay any legitimate debt of the corporation.

And your petitioner humbly appeals from that part of said order or decree of the Chancellor which decrees or orders as aforesaid upon the ground that the same is erroneous for that no receiver should have been appointed for the said defendant Metropolitan Steamship Company, nor given the power, authority or directions given by the said order or decree as aforesaid, and that the said defendant Metropolitan Steamship Company, its officers, directors and agents, and all persons claiming under it or them, ought not to have been enjoined or restrained as aforesaid.

Your petitioner therefore prays that the said order or decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

LINDABURY, DEPUE & FAULKS,
*Solicitors for and of counsel with appellant Metropolitan Steamship Company.*

## Petition of Appeal from Order Appointing Receiver Under the Statute.

Filed April 3, 1917.

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

The petition of Metropolitan Steamship Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by an order appointing receiver under the statute made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 15th day of February, 1917, in a cause wherein said Jennie R. Morse and others were complainants and your petitioner and others were defendants, in this respect to wit: that said order ordered, adjudged and decreed that the business of the Metropolitan Steamship Company had been and was being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, and further ordered, adjudged and decreed that the said corporation, and its officers and agents, desist and refrain from exercising any of its privileges or franchises, and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the said Court of Chancery until the said Court of Chancery otherwise ordered; and it was further ordered that Edward M. Colie, Esq., of Newark, be and he thereby was appointed receiver of the said corporation under the provisions of an act, entitled "An Act Concerning Corporations (Revision of 1896)," and its supplements and amendments, with all the duties and powers

conferred upon such receiver by such act; and it was further ordered that the said receiver have full power and authority to demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in way responsible at law or in equity to the corporation, upon such terms and in such manner as he should deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity; that a debtor who should have in good faith paid his debt to the corporation should not be liable therefor, and the receiver should have power to sell, convey and assign all the said estate, rights and interests, and should hold and dispose of the proceeds thereof under the directions of the Court of Chancery, and that this precise enumeration of powers should in no sense limit the general powers given by the act. And it was further ordered that in accordance with the provisions of the statute all the real and personal property of said corporation, wheresoever situated, and all of its franchises, rights, privileges and effects should forthwith vest in the said receiver, and the said corporation was divested of the title thereto. And it was further ordered that

the said receiver need not at the time of the said order give a further or substituted bond and that application might be made at any time to that end. And it was further ordered that the said corporation, its creditors and stockholders, show cause before the Chancellor, at the Chancery Chambers in the Prudential Building in the City of Newark, on Tuesday, the 6th day of March, 1917, at ten o'clock in the forenoon, if any cause they had why the said order should be vacated or modified, or why a change should be made in the personnel of the receiver, and leave was given to them to apply at such time for any relief that they might be advised they should have, and that copies of the said order, which need not be certified, should be served upon the agent of the corporation within this State and mailed to such of the creditors and stockholders whose addresses were known to the receiver, within seven days from the date thereof.

And your petitioner humbly appeals from that part of the said order which orders, adjudges and decrees as aforesaid upon the ground that the same is erroneous for that it ought not to have been ordered, adjudged and decreed that the business of the Metropolitan Steamship Company had been and was being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, and it ought not to have been ordered, adjudged and decreed that the said corporation, and its officers and agents, desist and refrain from exercising any of its privileges or franchises, and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the

said Court of Chancery until the said Court of Chancery should otherwise order, and it ought not to have been ordered that Edward M. Colie, Esq., of Newark, be and he ought not to have been thereby appointed receiver of the said corporation under the provisions of an act, entitled "An Act Concerning Corporations (Revision of 1896)," and its supplements and amendments, with all the duties and powers conferred upon such receiver by such act, and it ought not to have been ordered that the said receiver have full power and authority to demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporations, and in his discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possesion of its property or in any way responsible at law or in equity to the corporation, upon such terms and in such manner as he should deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity, and that a debtor who should have in good faith paid his debt to the corporation should not be liable therefor, and that the receiver should have power to sell, convey and assign all the said estate, rights and interests, and should hold and dispose of the proceeds thereof under the directions of the Court of

Chancery, and that this precise enumeration of powers should in no sense limit the general powers given by the act; and that it ought not to have been ordered that in accordance with the provisions of the statute all the real and personal property of said corporation, wheresoever situated, and all of its franchises, rights, privileges and effects should forthwith vest in the said receiver, and that the said corporation was divested of the title thereto; and it ought not to have been ordered that the said receiver need not at the time of the said order give a further or substituted bond and that application might be made at any time to that end; and it ought not to have been further ordered that the said corporation, its creditors and stockholders, show cause before the Chancellor, at the Chancery Chambers in the Prudential Building in the City of Newark, on Tuesday, the 6th day of March, 1917, at ten o'clock in the forenoon, if any cause they had why the said order should be vacated or modified, or why a change should be made in the personnel of the receiver, and that leave was given to them to apply at such time for any relief that they might be advised they should have, and that copies of the said order, which need not be certified, should be served upon the agent of the corporation within this State and mailed to such of the creditors and stockholders whose addresses were known to the receiver, within seven days from the date thereof.

Your petitioner therefore prays that the said order of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may

have such relief in the premises as to this honorable Court shall seem meet.

LINDABURY, DEPUE & FAULKS,
*Solicitors for Appellant.*

FREDERIC J. FAULKS,
*Of Counsel with Appellant.*

## Petition of Appeal from Order Continuing Receiver.

Filed April 3, 1917.

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

The petition of Metropolitan Steamship Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by an order continuing receiver made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 6th day of March, 1917, in a cause wherein said Jennie R. Morse and others were complainants and your petitioner and others were defendants, in this respect to wit: that the said order orders that the appointment of Edward M. Colie, Esq., as receiver of the said Metropolitan Steamship Company be and it was thereby confirmed, and he was thereby continued as receiver of the said Metropolitan Steamship Company under the provisions of an act, entitled "An Act Concerning Corporations (Revision of 1896)," and its supplements and amendments, with all the powers and duties conferred upon such receiver by said act and by a certain order of the said Court of Chancery made on the 15th day of February, 1917.

And your petitioner humbly appeals from that part of said order which orders as aforesaid upon the ground that the same is erroneous for that the appointment of the said Edward M. Colie, Esq., as receiver of the Metropolitan Steamship Company ought not to have been confirmed and he ought not to have been continued as receiver of the said Metropolitan Steamship Company under the provisions of said act as in said order provided.

Your petitioner therefore prays that the said order of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

LINDABURY, DEPUE & FAULKS,
*Solicitors for Appellant.*

FREDERIC J. FAULKS,
*Of Counsel with Appellant.*

## SIX FORMAL ANSWERS TO PETITIONS OF APPEAL.