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Bill of Complaint.

Filed March 4, 1931

IN CHANCERY OF NEW JERSEY.

To the Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey.

The bill of complaint of James H. Scott, Jr., of Richmond, in the State of Virginia, who is the owner of record in his own right of 1,200 shares of the common capital stock of P. Lorillard Company, the defendant herein; Frederic W. Scott, Jr., of Richmond, aforesaid, who is the owner of 1,100 shares; Marion N. Fitzgerald of Richmond aforesaid, who is the owner of 200 shares; Buford Scott of Richmond aforesaid, who is the owner of more than 1,500 shares; Frederic William Scott, Buford Scott, Walter S. Robertson and Edward C. Anderson, partners trading as Scott & Stringfellow in Richmond aforesaid, who are the owners of more than 1,300 shares; Henry Stern, M.D., of Richmond, aforesaid, who is the owner of 300 shares; James T. Parkinson of Richmond aforesaid, who is the owner of 400 shares; Robert C. Thornton of Richmond aforesaid, who is the owner of 280 shares; Holt Page of Richmond aforesaid, who is the owner of 200 shares, John Currie of Richmond aforesaid, who is the owner of 60 shares; Henry Baskerville of Richmond aforesaid, who is the owner of 500 shares; Ethel Baskerville of Richmond aforesaid, who is the owner of 200 shares; Mary V. Lafferty of Richmond aforesaid, who is the owner of 110 shares; and James T. Parkinson above mentioned, who owns 67 shares of the preferred stock of said Company; who file this bill of complaint on their own behalf, and on behalf of such other stockholders of P. Lorillard Company as shall hereafter

come into this suit and contribute to the expense thereof, respectfully shows:

1. That P. Lorillard Company is, and for a number of years last past has been, a corporation existing and organized under the laws of the State of New Jersey, with its principal office located at 15 Exchange Place, Jersey City, this state, and engaged in the manufacture and sale of tobacco, cigarettes, cigars and other like commodities. A certified copy of its certificate of incorporation is hereto annexed, made a part hereof and maked Exhibit 1. According to the balance sheet issued by the company as of December 31, 1930, it has at the present time issued and outstanding, 113,076 shares of 7% cumulative preferred stock of a par value of $100 per share, and 1,909,061 shares of common stock of no par value, the common and preferred stock both having equal voting power for each share. In addition to the aforesaid stock, there are issued and outstanding at the present time, $9,303,700 of 7% bonds, $10,617,450 of 5% bonds and $13,758,000 of 5½% debenture bonds, making a total bonded indebtedness of the company as at present existing of $33,679,150.

2. The complainants above named have been stockholders for a period of several years anterior to the filing hereof.

3. On or about the 10th of March, 1925, the stockholders of said company authorized the sale to employees of the company of 100,000 shares of common stock at not less than $30 per share; and

on September 7, 1929, authority was likewise made for the sale to employees of an additional 150,000 shares of common stock, at not less than $20 per share. The complainants believe and charge that of the 100,000 shares first above authorized to be sold to employees at not less than $30 per share, at least 74,199 shares have been and are at the present time issued and outstanding. None of the second issue authorized has been sold. At the times that these two authorizations were made at the prices of $30 and $20 respectively, the market value of the shares was approximately $35 and $24 respectively, and the book value of such shares was approximately $17.80 and $19.65 respectively.

4. Complainants are not accurately informed as to the names of the employees to whom the issue of 74,199 shares has been made, nor the exact terms of the contract of purchase entered into by them, which the complainants believe and charge to have been and to be in writing, but they show that practically all of such issue stands on the books of the company in the name of H. Laurence Brooke, as agent. Mr. Brooke is the Secretary of the Company.

5. The complainants are informed, believe and therefore charge that the shares of employees stock so issued, pursuant to such authorization, are still unpaid for in whole or in part, the exact facts with reference thereto being unknown by the complainants, and information with regard thereto, which has been sought after the receipt of the circular hereinafter mentioned, has been refused by the man-

agement of the company, and is wrongfully withheld. The complainants, however, show that whatever were the terms of the contract providing for the purchase thereof, the least price at which such purchase was authorized was $30 a share. Attached hereto and made a part hereof and marked Exhibit 2, is a copy of a letter sent by one of the complainants herein to the President of the company, demanding the information aforesaid.

6. The next annual meeting of the stockholders of the company is to be held on the 10th of March, 1931, and pursuant to the company's by-laws, a true copy whereof is hereto annexed, made a part hereof and marked Exhibit 3, the record books of the stockholders were closed thirty days' anterior to that date. On or about the 14th of February, 1931, a letter was mailed by B. L. Belt, President of the Company to, and received by the complainants, among other stockholders, of which a true copy is hereto annexed, made a part hereof, and marked Exhibit 4. This letter announced the proposition that at the approaching stockholders' meeting, a resolution would be offered by which the contracts of sale of stock to employees, hereinabove described, would be cancelled, and that new stock would be re-sold to the employees of the company for not less than $10 per share, thus reducing the price at which the stock of the company was purchased by its officers and employees from not less than $30 per share to not less than $10 per share. Your complainants also allege that since the date of authorization of the sale of said stock at $30 per share, the stock has sold on the New York Stock Exchange

for more than $45 per share, and that it is therefore possible that an officer or employee of the company, if he had bought the stock for $30 a share, might have sold this stock for $45 a share, could have since bought it on the market for less than $9 a share, and could now be relieved from his contract to purchase the stock at $30 per share, and would also be enabled to buy back the stock at $10 per share, which is at the present time some $7 under the price of said stock as quoted by the New York Stock Exchange.

7. The Company has eleven directors, all of whom are either officers or employees, and who became, therefore, entitled under a by-law hereinafter mentioned, to receive a bonus based on the number of shares of common stock held by them; namely the President on not in excess of 3⅓% of the average issued common stock, the Vice Presidents on not in excess of 2% of the average issued common stock, the Secretary, Treasurer, Auditor, Manager, Superintendent, Heads of Departments (such as Leaf, Law, Sales, Manufacture, Traffic and the like) Assistant to any of the foregoing or Assistant or Secretary to the President or to any Vice President on not in excess of 1%, and any other employee on not in excess of ½ of 1%, all of which appears in the form of a by-law authorized in the year 1921, by a vote of the stockholders.

8. Accompanying the letter of the President of the company dated February 14, 1931, and hereinbefore referred to, was a copy of the proposed revision of the bonus by law, and of the authority to

sell stock, a copy whereof is hereto annexed, marked Exhibit 5, and made a part hereof. Complainants refer the Court to the whole of the said plan regarding said proposed revision, and specially direct its attention to the fact that the proportion to which the President may participate in payments and distributions is 7½% of the average issued common stock of the company for the year in which the bonus is to be paid, whereas under the by-law at present in force, he may participate only to the extent of 3⅓% of the average issued common stock. The percentage to which the Vice President might be entitled under the proposed plan is 5%, rather than 2% as at present; the percentage to which the Secretary and other officers and heads of departments might be entitled is 2½% rather than 1% as at present, and the percentage to which other employees might be entitled is 1% rather than ½ of 1% as at present.

9. The attention of the Court is also particularly called to the fact that in the plans no provision has been made for a proportionate distribution of the stock which it is proposed to issue among the officers and employees of the company, and that therefore it is possible for one or any number of the officers of the company to acquire all of the said proposed issue of 250,000 shares.

10. Again, the complainants call to the attention of the Court the fact that in the said plan no provision is made whereby an officer or employee who purchases the said stock shall be obligated to hold the said stock for any fixed period of time,

nor are any definite payments for said stock required of the officer or employee, nor is there any provision whereby the regular payments which should be required are deducted from the salary of the officer or employee, or otherwise secured.

11. Again, under the proposed revision, the bonus to which officers and employees would be entitled has been fixed at 5% of the earnings of the company after interest has been paid on the bonds outstanding and the dividends on the outstanding preferred stock, but before any payment to the holders of the common stock of the company, whereas under the present bonus law, while 15% of the earnings of the company are applicable to the bonus provision, they are so applicable only after setting aside earnings of $1.50 per share of common stock outstanding, and 7% of the average surplus and undivided profits for the year, has also been set aside.

12. Another important difference between the two bonus plans is that by the one now in operation, the officer or employee who purchases stock from the company, in order to be entitled to receive his pro rata share of the bonus for the first year of ownership, was required to have owned the stock for at least six months of that year, whereas by the proposed plan such ownership by any officer or employee may be acquired on the last day of the calendar year 1931, and he may still be deemed an owner and participate in the bonus of that year.

13. The present book value of the stock of the corporation is more than $21 per share, as appears

from the balance sheet issued by the corporation as of December 31, 1930, without including any estimate of the value of the good will, including its several widely advertised brands, which is very great, the said good will being carried by the company at the equivalent of over $11 per share, so that the total book value of the stock, including good will, as shown by the statement of the corporation, is now greater than $32 per share. The common stock of said corporation is now selling on the New York Stock Exchange at between $16 and $18 per share. If the scheme outlined in the President's letter and in the proposed plan is permitted to be consummated, the President, the Vice Presidents, and all other officers and employees who are the present owners of the 74,199 shares of employees stock, and are at present obligated to pay at not less than $30 a share, would be able to make good their purchases by paying not less than $10 a share, for the reason that the new bonus plan provides that the contracts to purchase the stock at $30 per share may be cancelled and new stock issued in its stead at not less than $10 per share. Furthermore, the President and the Vice Presidents and the other members of the Board of Directors, who would by virtue of their offices, have a peculiar familiarity with the business affairs of the company and its success, or the reverse, during the year 1931, would be enabled to wait until the last day of that year, and then by the exercise of the proposed subscription right, to absorb the whole employees issue, and without making any cash payments therefor, either at the time of the purchase, nor possibly thereafter, because the bonuses to which they might be entitled might not only carry

the amounts of interest which the purchasers are required to pay, but might also pay for the whole of the purchase price thereof.

14. The foregoing results only have appeared to the complainants after a careful study of the plan as outlined above. There may be, and probably are, other inequities which have not yet been apprehended. The form of the proposed by law is quite technical and difficult of comprehension, and the complainants charge that unless the matter is brought to the intelligent attention of the stockholders who are not officers of the company, or employees, the seriousness of it to them is not likely to be apprehended, and therefore the complainants have entered upon a plan to inform their fellow stockholders of the effect thereof, and to apprise them of its illegality and impropriety, and to that end, promptly after the receipt of the President's letter of February 14th, sought to obtain a copy of the list of stockholders, and personal demand was made by a representative of the complainants, at the office of the corporation in the City of New York, on the 26th day of February 1931, and permission to see the list was then refused, but it was intimated that on the day following, namely the 27th day of February, 1931, the complainants would be allowed to use the stock list in the hands of the Transfer Agent. Nevertheless, when demand was again made on the 27th day of February, 1931, at the office of the Company in the City of New York for permission to see the stock list, at the office of the company or at the office of the Transfer Agent, permission so to do was categorically refused, and your complainants were told by the Secretary of

the Company that they would be allowed such rights only as they were by law entitled to, though your complainants had stated that they were entitled by law to reasonable access to the records of the company at any time during business hours. Your complainant, James H. Scott, Jr., then made a written demand on the Secretary of the Company for access to said stock list, a copy of said written demand being hereto attached, made part hereof and marked Exhibit 6, and refusal was again made, this time in writing, which said letter of refusal is hereto attached, made part hereof, and marked Exhibit 7. Your complainant, James H. Scott, Jr., having been told that he would be permitted to exercise his legal rights only, and not being advised that there were any legal restrictions on the right of a stockholder to reasonable access to the record of a corporation, then made application for said stock list at the principal office of the company in the City of Jersey City, in the State of New Jersey, and refusal was again made. Finally, on the 28th day of February, 1931, the complainant, James H. Scott, Jr., was shown a list of the stockholders at the principal office of the corporation in Jersey City, and was told that he might make extracts therefrom, but in violation of his rights as a stockholder, was refused the right to take a copy of the said list, though he had provided reasonable means therefor, so that the copy of said list would be taken without inconvenience to the officers of the corporation, and without injury to the said list. The said refusal to allow the said complainant to make a copy of the list of stockholders still continues. The list contains a vast number of names, and the complainants will not have sufficient time

between the 28th day of February and the 10th day of March to communicate with their fellow stockholders who are not employees or officers, and bring to their attention the facts hereinabove set out.

15. The complainants charge that as shown by a letter from H. Laurence Brooke, Secretary of the corporation, which said letter is attached hereto, made a part hereof and marked Exhibit 8, it is the intention of the management of the company to vote at the approaching meeting, or whenever the said resolution shall come up, the approximately 74,199 shares of employees stock already issued and outstanding in the name of H. Laurence Brooke, Agent, on the question of the modifications hereinabove referred to, and thereby to use the said stock to vote in favor of the proposition to cancel the contract by which they had bought the identical stock, and to vote in favor of the proposition to modify the terms of, and obligations and rights thereunder, which changes will be greatly in their own favor and detrimental to the interests of the corporation, and to the interests of the non-employee stockholders, and therefore the interest of the non-employees in the value of the non-employees' stock will be greatly diluted.

16. It is obvious from the foregoing that it is very essential that the terms and provisions of the contract of purchase of the 74,199 employees' shares of stock already issued, should be ascertained. The complainants have demanded, but have been refused information with reference thereto, and it is the apparent purpose of the offi-

cers of the company to deprive the complainants of any knowledge in that regard.

17. The complainants allege that the carrying into effect of the proposed resolutions with reference to cancellation of contracts and the new stock purchase plan, would be a fraud upon the rights of the non-employee stockholders of the company, and a fraud upon the corporation, and that the proposed plan is, therefore, illegal and improper, and if carried into effect, the majority, permitting and voting for it, would be entitled to benefit themselves at the expense of the minority.

18. Your complainants allege that under the circumstances hereinabove set forth, it is improper that the said stockholders meeting to be held on the 10th day of March, 1931, should be held by the officers of the corporation who may so greatly benefit by the adoption of the resolutions hereinabove described, and that it is improper that tellers appointed by the directors of the corporation (all of whom are employees of the corporation) to serve at said meeting.

19. Your complainants show that the management of the corporation has caused to be sent to all of the stockholders of the corporation, a form of proxy, a copy of which is hereto attached, made part hereof and marked Exhibit 9; that in the said form of proxy Benjamin L. Belt, William R. Perkins and H. Laurence Brooke are given authority to cast the vote of all stockholders signing the proxy. Your complainants allege that Benjamin L. Belt is President of the corporation and a mem-

ber of the Board of Directors, that William R. Perkins is counsel for the corporation, and that H. Laurence Brooke is the Secretary of the corporation. Your complainants allege that it would be improper and illegal to permit these three officers and employees of the company to vote the said proxies on the question of resolutions which might be greatly to their individual benefit, and to the detriment of the corporation, as your complainants believe and charge, to their own detriment.

20. Your complainants also charge that when the said notice of the proposed changes in the bonus and stock subscription plans was sent to the stockholders, and their proxies requested by the management, it was the duty of the management of the corporation to advise the stockholders that all of the directors were officers or employees of the corporation, and therefore entitled to benefit under this plan; and that the three persons in whose favor the proxies ran were also all officers or employees of the corporation; and, finally, that full information should have been given to the stockholders as to the contracts already existing with the officers and employees for the purchase of the stock of the corporation, and particularly as to contracts between the corporation and the individual members of its board of directors.

Complainants therefore pray:

1. That P. Lorillard Company, B. L. Belt, D. H. Ball, Everett Meyer, G. H. Hummel, H. A. Stout, E. J. Bush, W. W. Drewry, J. S. Freeman, J. T. Keel, E. G. Weymouth and A. H. Shinkle (whose

full names are otherwise unknown to the complainants) defendants herein, may answer the premises.

2. That the meeting of the stockholders now set for the 10th day of March, 1931, may be postponed until the further order of the Court, and until the complainants have abundant opportunity to confer with their associate stockholders, with reference to the matters to be brought up thereat.

3. That the holding of the said meeting of stockholders by the officers of the corporation be restrained and enjoined, and that this Court may hold the said meeting, under its own directions, appoint a Special Master for the purpose of holding said meeting, and also appoint its own tellers to act at the said meeting.

4. That the said P. Lorillard Company, its officers, agents and tellers be enjoined at the stockholders meeting, or until permitted by this Court, from permitting a vote to be had upon the proposed revision of the bonus by law, and the proposed revision of authority to sell stock hereinabove referred to.

5. That Benjamin L. Belt, William R. Perkins, and H. Laurence Brooke be restrained and enjoined from voting any proxies received by them, given on the form sent out by the management of the corporation; and that the Court will appoint its own proxies to vote the said stock at the stockholders' meeting.

6. That at the said meeting of stockholders, the officers, agents and tellers who are acting, and the corporation be restrained from, or instructed not to receive the vote, upon the proposition of adopt-

ing the proposed revision of authority to sell stock, of the 74,199 shares of employees stock already issued and outstanding, or such part thereof as has not been fully paid for, or any other stock owned by said officers and employees.

7. That the company may be required to discover and produce all of the contracts made between the company and the employees or officers thereof, who at present are under obligations to purchase the employees stock at the rate of $30. per share or at any other rate therein provided.

8. That in the meantime, and until otherwise directed, the officers of, and the said P. Lorillard Company be enjoined and restrained from releasing the purchasers of said 74,199 shares, or whatever number of shares of employees stock has already been issued or agreed to be bought, from the obligations to purchase the shares therein contained.

9. That the said P. Lorillard Corporation be required to pay the costs of this proceeding, including a reasonable fee to counsel for complainants, and the reasonable amount of their necessary expenditures incurred in the protection of the corporation from the results of the threatened acts.

And that the complainants may have such further and other relief as shall be equitable and just.

McCarter & English,
Solicitors for and of Counsel
with Complainants.

Robert A. McCarter,
John H. Boccock,
Of Counsel.

EXHIBIT 1, ANNEXED TO BILL OF COMPLAINT

CERTIFICATE OF INCORPORATION

OF

P. LORILLARD COMPANY

THIS IS TO CERTIFY that the undersigned, Forrest E. Griswold, George T. Minnigerode and Morton E. Finch do hereby associate themselves into a Corporation under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)" and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names.

First—The name of the Corporation is P. Lorillard Company.

Second—The location of the principal office in this State is at the corner of Newark Avenue and Senate Place in the City of Jersey City, county of Hudson. The name of the statutory agent therein and in charge thereof upon whom process against this Corporation may be served is W. J. Hellmer.

Third—The objects for which this Corporation is formed are to dry and cure leaf tobacco and to buy, manufacture, sell, and otherwise deal in tobacco and the products of tobacco in any and all forms; to construct or otherwise acquire and hold,

own, maintain and operate warehouses, factories, offices, and other buildings, structures and appliances for the raising, drying, curing, storing, manufacturing, selling and distributing of tobacco and its products in any and all forms. The Corporation shall have power to conduct its business in all its branches, have one or more offices and unlimitedly acquire, hold, mortgage, and convey real and personal property in the State of New Jersey and as well in all other States, territorities, possessions and dependencies of the United States and in all foreign countries.

Fourth—The total authorized capital stock of this Corporation is twenty-six million four hundred and sixty-three thousand and two hundred dollars ($26,463,200) divided into two hundred and sixty-four thousand and six hundred and thirty-two (264,632) shares of the par value of one hundred dollars ($100) each. Of said stock one hundred and thirteen thousand and seventy-six (113,076) shares are to be preferred stock and one hundred and fifty-one thousand five hundred and fifty-six (151,556) shares are to be common stock. The preferred stock shall entitle the holders thereof to full voting rights and to receive out of the surplus or out of the net profits of the Corporation, and the Corporation shall be bound to pay thereon as and when declared by the Board of Directors, a dividend at the rate of, but never exceeding, seven per centum (7%) per annum, which dividend shall be cumulative from and after the first day of January, 1912 and payable yearly, half-yearly or quarterly before any dividend shall be set apart

or paid on the common stock. When all accrued dividends on the preferred stock have been paid the Directors may, if in their judgment the surplus or the net profits shall be sufficient for such purpose after deducting the amount of dividends to accrue on the preferred stock during the current year, declare and pay a dividend or dividends on the common stock. In the event of any liquidation or dissolution or distribution of the assets of the Corporation (whether voluntary or involuntary) the holders of the preferred stock shall be entitled to be paid the par amount of their preferred shares and the amount of dividends accumulated and unpaid thereon before any amount shall be payable or paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value and the dividends accumulated and unpaid thereon, the residue of the assets of the Corporation shall be ratably divided among and paid to the holders of its common stock.

The amount with which the Corporation will commence business is One Thousand Dollars, which is divided into Ten shares of the par value of One Hundred Dollars each.

Fifth—The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which the Company will commence business, all of common stock, are as follows:

Exhibit 1, Annexed to Bill of Complaint

Name	Post Office Address	No. of Shares
Forrest E. Griswold	Cor. Newark Ave. & Senate Place, Jersey City, N. J.	4
George T. Minnigerode	Cor. Newark Ave. & Senate Place, Jersey City, N. J.	3
Morton E. Finch	Cor. Newark Ave. & Senate Place, Jersey City, N. J.	3

Sixth—In furtherance of the powers conferred by general law the Company shall have power to guarantee dividends on any shares of the capital stock of any corporation in which it has an interest as stockholder and to endorse or otherwise guarantee the principal and interest, or either, of any bonds, securities or other evidence of indebtedness created by any corporation in which the Corporation has such an interest, provided that authority for any such indorsement or guaranty be first given by resolution adopted by vote of at least two-thirds of the whole Board of Directors of the Corporation; to carry on any business operations deemed by the Corporation to be necessary or advisable in connection with any of the objects of its incorporation or in furtherance of any thereof, or tending to increase the value of its property or stock; but nothing herein set forth is to be construed to authorize the formation hereby of an insurance, safe deposit or trust company, banking corporation or savings bank or corporation deemed to possess any of the powers prohibited to corpora-

tions formed under the statutory provisions aforesaid; the said Corporation shall have power to purchase or otherwise acquire and hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of or of any bonds, securities or other evidences of indebtedness created by any other corporation or corporations of this or any other State or government, and to issue its own obligations in payment or exchange therefor, or for any purpose of its incorporation, and to secure such obligations to pledge or mortgage under deed of trust or otherwise of the shares of capital stock or bonds, securities or other evidences of indebtedness so acquired, or of any property of the Corporation. The power to make and alter By-Laws of the Corporation is conferred upon the Directors. The Directors of the Corporation may hold their meetings and have an office and keep the books of the Corporation (except the stock and transfer books) in the City of New York or elsewhere outside of the State of New Jersey. The Directors of the Corporation shall have the power to fix and determine from time to time and to vary the sum to be reserved, over and above its capital stock paid in, as a working capital, before declaring any dividends among its stockholders, and to fix the time of declaring and paying any dividend, and the amount of any dividend shall be determined by the Directors, unless otherwise provided by the By-Laws of the Corporation; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in. All sums so reserved may be applied from time to time to the acquisition of property as the Direc-

tors shall from time to time determine, and neither the property so acquired, nor any of its capital stock held by the Corporation shall be regarded as surplus or as net profits, for the purpose of declaration or payment of dividends, unless otherwise determined by the Directors. In case of any increase in the number of Directors of the Corporation, pursuant to its By-Laws, which may provide for such increase by vote of the Directors, vacancies in the Board shall be deemed to be thereby created which the existing Directors shall have power to fill until the next election by Stockholders, or until successors shall be otherwise chosen. The By-Laws of the Corporation may prescribe the number necessary to constitute a quorum of the Directors, which may be less than a majority of the Directors.

Seventh—The duration of the Company shall be perpetual.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the 23rd day of November, A. D. 1911.

FORREST E. GRISWOLD [SEAL]

GEORGE T. MINNIGERODE [SEAL]

MORTON E. FINCH [SEAL]

Signed, sealed and delivered
in the presence of

WILLIAM R. PERKINS

RICHARD J. BOYLAN.

Exhibit 1, Annexed to Bill of Complaint

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

Be it remembered, That on this 23rd day of November, 1911, before me Richard J. Boylan, a foreign Commissioner of the State of New Jersey, in New York, personally appeared Forrest E. Griswold, George T. Minnigerode and Morton E. Finch, known to me to be the individuals described in and who executed the foregoing certificate, and I first having made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 23rd day of November, A. D. 1911.

Richard J. Boylan,
Foreign Commissioner of New Jersey,
Resident of New York.

[seal]

Endorsed:

"Received in the Hudson Co., N. J., Clerk's office, Nov. 24, A. D. 1911, and Recorded in Clerk's Record No..... on page.....

John F. Crosby,
Clerk."

"Filed and Recorded
Nov. 24, 1911
S. D. Dickinson,
Secretary of State."

Exhibit 1, Annexed to Bill of Complaint

STATE OF NEW JERSEY

DEPARTMENT OF STATE

I, S. D. DICKINSON, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of the Certificate of Incorporation of P. Lorillard Company, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Twenty-fourth day of November A. D. 1911, and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Ninth day of December A. D. 1911.

S. D. DICKINSON,
Secretary of State.

[SEAL]

EXHIBIT 2, ANNEXED TO BILL OF COMPLAINT.

SCOTT & STRINGFELLOW

BANKERS & BROKERS

Frederick Wm. Scott
Buford Scott
Walter S. Robertson
Edward C. Anderson

Members
New York Stock Exchange
New York Curb Market (Associate)
Richmond Stock Exchange
Cable Address: Scotts

RICHMOND, VA. February 26th, 1931.

Mr. B. L. Belt, President,
P. Lorillard Company,
119 West 40th Street,
New York City.

Dear Sir:

As a stockholder of P. Lorillard Comany, and with reference to the proposed revision of the bonus by-law of the company and of the resolutions hereto passed authorizing the sale of common stock to employees, as outlined in your letter of February 14th, 1931, to stockholders, I hereby request the following information as to the 100,000 shares authorized March 10, 1925, to be sold to employees at not less than $30 per share:

1. The names of, and the number of shares sold to each of the following officers and employees, namely; the president, vice-presidents, secretary, treasurer, auditor, managers, superintendents, heads of departments, assistants to any of the foregoing, assistants and secretaries to the president or any vice-president.

Exhibit 2, Annexed to Bill of Complaint

2. The terms of sale—in each case if the terms of sale were different.

3. The amounts which have been paid to the company for each sale.

4. The number of shares sold to the employees other than those listed above.

5. The terms of sale to the employees other than those listed above.

6. The total amount which has been paid to the company by the employees other than those listed above.

I request the same information as to the 150,000 shares authorized September 7, 1929, to be sold to employees at $20 per share.

Yours very truly,

Signed BUFORD SCOTT.

EXHIBIT 3, ANNEXED TO BILL OF COMPLAINT

BY-LAWS

OF

P. LORILLARD COMPANY

ARTICLE I.

Directors.

Section 1. The number of Directors of this Company is fixed at eleven, who shall be annually elected and shall hold office until the next following annual meeting of Stockholders, or until their successors are duly elected and qualified.

Sec. 2. The number of the Directors may be altered at any time by vote of a majority of the Directors at any regular or special meeting.

Sec. 3. A Stockholder need not hold more than one share of the stock of the Corporation to qualify him to be a Director.

Sec. 4. Vacancies among the Directors shall be filled by vote of the remaining Directors at any regular or special meeting of the Board.

Sec. 5. The Directors may hold their meetings and have an office and keep the books of the Corporation (except the stock and transfer books) in the City of New York, or elsewhere outside of the State of New Jersey.

Exhibit 3, Annexed to Bill of Complaint

ARTICLE II.

Meetings of Stockholders.

Section 1. The annual meeting of the Stockholders of the Corporation for the election of Directors, and such other business as may properly come before the meeting, shall be held at the principal office of the Company in New Jersey, on the second Tuesday of March, at eleven o'clock in the forenoon, or at any other hour as the Directors shall appoint before notice of the meeting is given.

Sec. 2. Special meetings of the Stockholders, to be held at the principal office of the Company in New Jersey may be called by the Directors for such purposes as shall be specified by resolution.

Sec. 3. Due notice of each annual meeting of the Stockholders shall be given by a written or printed notice signed by the Secretary of the Company and mailed, postage prepaid, at least twenty days prior to each meeting, to each Stockholder of record appearing on the books of the Company at the address given thereon, and public notice of the time and place of holding such meeting shall be published not less than once a week for two successive weeks previous thereto in a daily newspaper of general circulation, published in the City of New York.

Due notice of each special meeting shall be given also in the manner above provided. The notice shall state the object of the special meeting, and no other business shall be transacted at such meeting; but this provision shall not apply to annual meetings, at which any business may be transacted without notice of the object of such annual meeting.

Exhibit 3, Annexed to Bill of Complaint

Sec. 4. The President of the Corporation, if present, shall call to order, and preside at all meetings of the Stockholders, whether general or special, and the Secretary of the Corporation (or in his absence an Assistant Secretary) shall be the Secretary of such meeting; if the President is absent, any Vice-President (according to his official seniority) shall preside. If the President and all the Vice-Presidents are absent, the meeting shall be presided over by the person designated in writing by the President, or any one of the Vice-Presidents—the designation of the officer superior in official position controlling. If the President and all the Vice-Presidents are absent, and no one designated by the President or any of the Vice-Presidents is present, the meeting may call any Stockholder of record who is entitled to vote for directors to preside. In the absence of the Secretary and Assistant Secretaries, any person may be selected by the meeting to act as Secretary of the meeting.

Sec. 5. The Board of Directors shall have power to close the Transfer Books of the Corporation for a period not exceeding thirty (30) days preceding the date of any meeting of stockholders, or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange shall go into effect, provided that in lieu of closing the Stock Transfer Books as aforesaid the Board of Directors may fix in advance a date not exceeding thirty (30) days preceding the date of any meeting of stockholders, or the date for the payment of any dividends, or the date for the allotment of rights, or the date when any change or conversion or exchange of Capital Stock shall

go into effect, as a record date for the determination of the stockholders entitled to notice of and to vote at any such meeting or entitled to receive payment of any such dividend or any such allotment of rights or to exercise the rights in respect of any such change, conversion or exchange of Capital Stock, and in such case only stockholders of record on the date so fixed shall be entitled to such notice of and vote at such meeting or to receive payment of such dividend or to allotment of rights or exercise of such rights, as the case may be and notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid. Subject to the foregoing, at all meetings of the stockholders, each holder of the preferred or common stock shall be entitled to cast one vote for each share of such stock.

Sec. 6. Any voting proxy given by a Stockholder must be in writing, signed by the Stockholder.

Sec. 7. Less than a quorum of the Stockholders may adjourn any Stockholders' meeting.

Sec. 8. The Directors may appoint two Inspectors of the annual election at any time before notice of the meeting at which such election is held.

ARTICLE III.

Meetings of Directors.

Section 1. Regular meetings of the Directors shall be held at the office of the Directors in the City of New York on Wednesday in each week, at eleven o'clock in the morning. Special meetings may be held as determined by the Directors, and

may be called by the President at any time, and shall be called by him on the request of three Directors.

Sec. 2. No notice need be given of regular meetings of the Directors. Reasonable notice shall be given of special meetings, but notice of a meeting may be admitted or waived by all the Directors.

Sec. 3. At any meeting three Directors shall constitute a quorum, but less than a quorum may adjourn any meeting.

ARTICLE IV.

Officers.

Section 1. The Directors shall annually choose from their own number a President and five Vice-Presidents, and shall annually choose a Secretary and Treasurer, who need not be Directors.

Sec. 2. The Directors may elect a Comptroller, an Auditor and other officers and define their powers and duties.

Sec. 3. Any two offices not inconsistent with each other may be held by the same person.

Sec. 4. All officers elected by the Directors shall hold office, subject to removal by the Directors, until their successors are chosen and qualified.

Sec. 5. All agents and employees shall be appointed and may be removed by the President, subject to the control of the Directors.

Sec. 6. Vacancies among officers of the Corporation shall be filled as soon as practicable by vote of the Directors at any regular or special meeting.

Exhibit 3, Annexed to Bill of Complaint

Sec. 7. The President shall preside at the meetings of Directors, and shall have the management of the Company's affairs, subject to the control of the Directors.

Sec. 8. The Vice-Presidents shall have such power and perform such duties as shall at any time be delegated to them by the Directors, and in the absence or disability of the President one of them shall perform the duties of his office, subject to the control of the Directors.

Sec. 9. The Secretary shall give the requisite notice of meetings of the Stockholders and Directors, and shall record the proceedings of such meetings, and besides his powers and duties prescribed by law, shall have such other powers and perform such other duties as shall at any time be required of him by the Directors.

Sec. 10. The Secretary shall have the custody of the seal of the Corporation and of the books and papers, except those pertaining to the office of Treasurer.

Sec. 11. The Assistant Secretaries shall assist the Secretary in the discharge of his duties and shall have such powers and perform such other duties as shall at any time be delegated to them by the Directors, and, in the absence or disability of the Secretary, he shall perform the duties of his office, subject to the control of the Directors.

Sec. 12. The Treasurer shall have charge of the funds and securities of the Corporation, and shall keep and deposit the same as required by the Directors, and shall keep proper books of account of all receipts and disbursements and official transac-

tions of the Corporation, and shall render statements of his accounts as required by the President or the Directors.

Sec. 13. The Treasurer shall give a bond in such sum and with such surety or sureties as shall be required by the Directors for the faithful discharge of his duties.

Sec. 14. Any other officer, agent or employee of the Corporation may be required to give such security for the faithful performance of his duties as shall be determined by the Directors, who shall also determine the custody of any security given.

ARTICLE V.

Salaries.

Section 1. The salaries of all the officers elected by the Directors shall be fixed by the Directors.

Sec. 2. Salaries of all other agents and employees shall be fixed by the President, subject to the control of the Directors.

ARTICLE VI.

Seal.

Section 1. The seal of the Corporation shall be used and attested only as directed by the President or by the Directors.

ARTICLE VII.

Payments.

Section 1. All claims against the Corporation shall, so far as practicable, be paid by checks drawn

or indorsed to the order of the person having the claim.

Sec. 2. All checks or bank drafts shall be signed by any two of the following named officers: President, any Vice-President, Secretary, any Assistant Secretary, Treasurer, any Assistant Treasurer, Auditor, Cashier, and in such other manner as the Directors may from time to time designate.

Sec. 3. All notes or other obligations and contracts shall be signed by the President or a Vice-President and the Secretary or an Assistant Secretary or the Treasurer.

ARTICLE VIII.

Capital Stock.

Section 1. Certificates of the capital stock of the Corporation shall be issued for one or more full shares from certificate books kept for each class of stock, duly numbered and registered in the order of their issue opposite each certificate in the margin of said books, and shall be in the form the Directors shall prescribe.

Sec. 2. The capital stock shall be transferable only on the transfer books of the Corporation, subject to these By-Laws, by the owner in person, or by attorney or legal representative, written evidence of whose authority shall be filed with the Corporation.

Sec. 3. No transfer of capital stock can be required except upon surrender and cancellation of the certificate representing the same.

Sec. 4. The canceled certificate shall be pasted in the certificate books on the stub from which it was taken when issued.

ARTICLE IX.

Penalties.

Section 1. No Director or officer of this Company shall, during his term of office, engage directly or indirectly in any business similar to that in which this Company is or is to be engaged, or in the manufacture or sale of any supplies for or connected therewith, without the consent of two-thirds of the Directors of the Company.

Any violation of this provision shall be treated by the Board of Directors, after notice to the offender, as a vacation of his office, and his successor shall be thereupon duly elected; and the offender shall, in addition, be subject to a penalty of twenty dollars, and to such damages as can be legally collected.

ARTICLE X.

Dividends.

Section 1. Dividends upon the seven (7) percent cumulative preferred stock of the Company, payable out of the accumulated profits of the Company in excess of such sum, if any, as shall have been reserved as a working capital, shall be declared by the Directors so as to be payable on the first business day of January, April, July and October of each year. When all accrued dividends on the preferred stock have been paid, the Directors shall, if

in their judgment the surplus or net profits in excess of such sum, if any, as shall have been reserved as a working capital, and after deducting the amount of dividends accrued and accruing on the preferred stock during the current year, shall be sufficient for such purpose, have power, in their discretion, to declare a dividend or dividends on the general or common stock of the Company payable as may be directed. But no dividend shall be made payable within fifteen days of the date of its declaration.

ARTICLE XI.

Amendments.

Section 1. These By-Laws may be added to, altered, repealed or suspended at any regular or special meeting by a majority vote, at which not less than one-third of all the Directors are present.

ARTICLE XII.

Bonus to Officers and Employees.

Section 1. As soon as reasonably may be after the end of the calendar year 1921, and of each calendar year of the company's existence thereafter, and under and in accordance with all the terms of this article, the Treasurer of the Company shall ascertain the net profits of the Company for such year, and shall pay and distribute an amount of such net profits equal in the aggregate to fifteen per cent (15%) thereof to and among those officers and employees of the company who have both been in the employ and owned Common Stock of the

Company for the whole of such year as an extra dividend upon and in the proportion among such officers and employees of such shares of Common Stock thus owned by them respectively.

Sec. 2. For the purpose of this article of the By-Laws, the net profits of the Company for any year shall consist of the income and earnings of the Company in the operation and conduct of its businesses and affairs for such year after deducting therefrom all the taxes, costs, expenses and losses, such provisions as may be determined by the Board of Directors of the Company for depreciation and outstanding trade obligations and otherwise, and an additional amount equal in the aggregate to the 7% interest on its outstanding 7% Bonds, the 5% interest on its outstanding 5% Bonds, the 5½% interest on its outstanding 5½% Bonds, the 7% dividends on its issued 7% Preferred Stock, $1.50 per share on its average issued Common Stock without nominal or par value, and 7% on its average surplus and undivided profits for such year, to which profits shall be added or from which profits shall be deducted, as the case may be, the Company's proportion (based on its stock holdings) of the net profits or losses for such year of its subsidiary Companies.

Sec. 3. Wherever used in this Article the word "owned" shall mean and be satisfied only by the entire registered, legal and beneficial ownership, but the mere pledging of shares as collateral security shall not be deemed to impair such ownership if otherwise existing, and Common Stock sold by the Company to any officer or employee shall be deemed

so owned by such officer or employee so long as such officer or employee continues under contract to purchase the same from the Company notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee. To constitute a basis of participation for any year, the employment by the Company must exist for the whole of such year, except that should any officer or employee fail, for any reason, to be in the service of the Company for the whole of any year, such officer or employee, or the estate thereof, as the case may be, shall nevertheless participate in such payment and distribution for such year in the proportion that the duration of the employment of such officer or employee within such year bears to the whole of such year. To constitute a basis of participation with respect to any year, shares of said Common Stock must be owned by an officer or employee for the whole duration of the employment of the officer or employee by the Company within such year, except that should an officer or employee of the Company purchase shares of said Common Stock during such year from an officer or employee of the Company or from the estate of such an officer or employee, such shares shall constitute a basis for participation by such purchaser in such payment and distribution for such year in the proportion that the period during which such shares are owned by the purchaser within such year bears to the whole of such year, if, disregarding the limitation hereinafter contained as to the number of shares upon and with respect to which an officer or employee may participate, such shares might otherwise have entitled the officer or em-

ployee who, or whose estate, is selling the same to participate upon and with respect thereto in such payment and distribution for such year. The president may not participate in any such payment and distribution upon or with respect to any shares of said Common Stock in excess of 3⅓% of the average issued Common Stock of the Company for such year, no vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 2% of the average issued Common Stock of the Company for such year, no secretary, treasurer, auditor, manager, superintendent, head of a department (such as leaf, law, sales, manufacture, traffic and the like) assistant to any of the foregoing, or assistant or secretary to the president or to any vice-president may participate in any such payment and distribution upon or with respect to shares of said common stock in excess of 1% of the average issued common stock of the Company for such year, and no other officer or employee of the Company may participate in any such payment and distribution upon or with respect to shares of said common stock in excess of ½ of 1% of the average issued common stock of the Company for such year; but the Board of Directors of the Company may at any time by resolution in writing add to said "1%" Class any officer or employee or group or class of officers or employees then in said "½ of 1%" Class. Anything in this Article to the contrary notwithstanding, any shares of said Common Stock so owned during the whole of the last six months of the calendar year 1921 shall be deemed to have

been so owned for all the purposes of this article for the whole of the calendar year 1921.

Sec. 4. The acts and findings of the Treasurer in ascertaining the net profits for any such year and making payment and distribution of the 15% thereof shall be binding and conclusive on all parties, and no one claiming hereunder shall have a right to question the said acts and findings or to any examination of the books, papers or accounts of the Company, or to continue with the Company or any claim against the Company or against any officer, director or employee of the Company or any right or claim whatever except as herein specifically expressed. But nothing herein contained shall be construed to preclude the Company from correcting an error or preventing or undoing a fraud.

Sec. 5. This Article of the By-Laws may be amended or repealed only by the action of the stockholders of the Company and not by the Directors.

EXHIBIT 4, ANNEXED TO BILL OF COMPLAINT

P. LORILLARD COMPANY

119 WEST FORTIETH STREET
NEW YORK

OFFICE OF THE PRESIDENT

February 14, 1931.

To the Stockholders
of P. Lorillard Company.

You will observe from the enclosed statement of the Company that its net profits for 1930 applicable to Common Stock were $2,822,831.02 equivalent to $1.47 per share on the Common Stock as compared with $545,123.86 net profits or twenty-eight cents per common share for 1929. This gratifying increase, notwithstanding the general business depression, is due in large measure to the healthy growth of Old Gold which has continued.

There is being mailed to you herewith a notice of the annual meeting of stockholders from which you will see that, in addition to the election of directors, there will be considered a revision of the bonus by-law and of the resolutions hereto passed authorizing the sale of Common Stock to employees.

A copy of the proposed revision of the bonus by-law accompanies the notice; and a copy of the present bonus by-law will be sent any stockholder on application so that comparison may be made if desired. The essential change consists in making the amount to be distributed 5% of the net profits

applicable to dividends on the Common Stock instead of 15% of the net profits remaining after deducting 7% on the average amount represented by Common Stock and surplus. For the past several years the terms of this by-law have precluded any bonus distribution and this has proven quite a handicap in view of the bonus being paid by other companies. In this situation a division of such profits for bonus purposes on a 5 to 95 basis between employees and common stockholders is suggested as neither unfair nor excessive.

The stockholders authorized on March 10, 1925, the sale to employees of 100,000 shares of Common Stock at not less than $30. per share and on September 7, 1929, the sale to employees of an additional 150,000 shares at not less than $20. per share. But unfortunately, though these minimum prices were less at the time than market value, conditions so changed that none of the 150,000 has been sold and, while contracts for the sale of some of the 100,000 shares were made, these contracts are proving burdensome instead of beneficial as they necessarily prevent a disposition by the purchaser for a period of years in order to retain the interest of the purchaser through stock ownership. What is now suggested is the revision (see copy enclosed) of these authorizations, and the contracts made under them, to a price more consonant with market conditions, say not less than $10. per share. Such action is recommended as in keeping with what other companies are doing and necessary to give proper effect to the desire of the stockholders, already expressed, to interest employees in the Company through stock ownership.

Exhibit 4, Annexed to Bill of Complaint

Since the annual meeting will be important it is hoped that a full expression may be obtained from the stockholders. For this reason, if you cannot be present in person, please do not fail to execute and return the proxy which accompanies the notice, using the stamped addressed envelope enclosed for that purpose.

Respectfully,

B. L. BELT,
President.

EXHIBIT 5, ANNEXED TO BILL OF COMPLAINT

PROPOSED REVISION OF BONUS BY-LAW

RESOLVED: That Article XII of the By-Laws entitled "Bonus to Officers and Employees" be amended so as to read as follows:

"Section 1. As soon as reasonably may be after the end of the calendar year 1931, and of each calendar year of the Company's existence thereafter, and under and in accordance with all the terms of this Article, the Treasurer of the Company shall ascertain the net profits of the Company for such year, and shall pay and distribute an amount of such net profits equal in the aggregate to five per cent (5%) thereof to and among those officers and employees of the Company who have both been in the employ and owned Common Stock of the Company as hereinafter stated as an extra dividend upon and in the proportion among such officers and employees of such shares of Common Stock thus owned by them respectively.

"Section 2. For the purpose of this Article of the By-Laws, the net profits of the Company for any year shall consist of the income and earnings of the Company in the operation and conduct of its businesses and affairs for such year after deducting therefrom all the taxes, costs, expenses and losses, such provisions as may be determined by the Board of Directors of the Company for depreciation and outstanding trade obligations and otherwise, and an additional amount equal in the aggregate

to the 7% interest on its outstanding 7% Bonds, the 5% interest on its outstanding 5% Bonds, the 5½% interest on its outstanding 5½% Bonds and the 7% dividends on its issued 7% Preferred Stock, to which profits shall be added or from which profits shall be deducted, as the case may be, the Company's proportion (based on its stock holdings) of the net profits or losses for such year of its subsidiary Companies.

"Section 3. Wherever used in this Article the word 'owned' shall mean and be satisfied only by the entire registered, legal and beneficial ownership, but the mere pledging of shares as collateral security shall not be deemed to impair such ownership if otherwise existing, and Common Stock sold by the Company to any officer or employee shall be deemed so owned by such officer or employee so long as such officer or employee continues under contract to purchase the same from the Company notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee. To constitute a basis of participation for any year, the employment by the Company must exist for the whole of such year, except that should any officer or employee fail, for any reason, to be in the service of the Company for the whole of any year, such officer or employee, or the estate thereof, as the case may be, shall nevertheless participate in such payment and distribution for such year in the proportion that the duration of the employment of such officer or employee within such year bears to the whole of such year. To constitute a basis of participation with respect to any year, shares of said Common Stock must be

owned by an officer or employee for the whole duration of the employment of the officer or employee by the Company within such year, except that should an officer or employee of the Company purchase shares of said Common Stock during such year from an officer or employee of the Company or from the estate of such an officer or employee, such shares shall constitute a basis for participation by such purchaser in such payment and distribution for such year in the proportion that the period during which such shares are owned by the purchaser within such year bears to the whole of such year, if, disregarding the limitation hereinafter contained as to the number of shares upon and with respect to which an officer or employee may participate, such shares might otherwise have entitled the officer or employees who, or whose estate, is selling the same to participate upon and with respect thereto in such payment and distribution for such year. The president may not participate in any such payment and distribution upon or with respect to any shares of said Common Stock in excess of 7½% of the average issued Common Stock of the Company for such year, no vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 5% of the average issued Common Stock of the Company for such year, no secretary, treasurer, auditor, manager, superintendent, head of a department (such as leaf, law, sales, manufacture, traffic and the like), assistant to any of the foregoing, or assistant or secretary to the president or to any vice-president may participate in any such payment and distribution upon or with

respect to shares of said Common Stock in excess of 2½% of the average issued Common Stock of the Company for such year, and no other officer or employee of the Company may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 1% of the average issued Common Stock of the Company for such year; but the Board of Directors of the Company may at any time by resolution in writing add to said '2½%' Class any officer or employee or group or class of officers or employees then in said '1%' Class. Anything in this Article to the contrary notwithstanding, any shares of said Common Stock acquired by an officer or employee from the Company at any time in 1931 shall be deemed to have been owned by such officer or employee for all the purposes of this Article for the whole of the calendar year 1931 notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee.

"Section 4. The acts and findings of the Treasurer in ascertaining the net profits for any such year and making payment and distribution of the 5% thereof shall be binding and conclusive on all parties, and no one claiming hereunder shall have a right to question the said acts and findings or to any examination of the books, papers or accounts of the Company, or to continue with the Company or any claim against the Company or against any officer, director or employee of the Company or any right or claim whatever except as herein specifically expressed. But nothing herein contained shall be construed to preclude the Company from correcting an error or preventing or undoing a fraud.

"Section 5. This Article of the By-Laws may be amended or repealed only by the action of the Stockholders of the Company and not by the Directors.

PROPOSED REVISION OF AUTHORITY TO SELL STOCK

RESOLVED: That the resolution passed March 10, 1925, authorizing the Board of Directors to sell to employees not exceeding 100,000 shares of Common Stock at not less than $30. per share and the resolution passed September 7, 1929, authorizing the Board of Directors to sell to employees not exceeding an additional 150,000 shares of Common Stock at not less than $20. per share, are hereby amended and consolidated so that in lieu of said resolutions the Board of Directors shall be and it is hereby authorized to issue and sell at not less than $10. per share not exceeding 250,000 shares of the Common Stock of this Company, without nominal or par value, to such officers and employees of the Company, at such times, on such terms and in such manner and amounts as may be determined by said Board at any time and from time to time;

RESOLVED FURTHER: That any contracts now existing for the sale to employees of Common Stock under said resolution of March 10, 1925, may be by said Board cancelled or altered in conformity with the above amendment of said resolution, as said Board may determine.

EXHIBIT 6, ANNEXED TO BILL OF COMPLAINT

February 27, 1931.

Mr. H. Lawrence Brooke
Secretary, P. Lorillard Company
119 West 40th Street
New York City

Dear Sir:

As a stockholder of P. Lorillard Company, I hereby demand access to the stock list of the Company, as of February 9, 1931, and reasonable opportunity to have a copy made of said stock list, during business hours, at the office of the Company, or at the office of the Registrar and/or transfer agent.

If you prefer that I should use the stock list of the registrar and/or transfer agent, I hereby demand written authorization to that effect.

Very truly yours,

JS:K

EXHIBIT 7, ANNEXED TO BILL OF COMPLAINT

P. LORILLARD COMPANY

Tobacco—Cigarettes—Cigars

119 West 40th St.

New York

February 27, 1931.

Mr. James H. Scott, Jr.
c/o F. B. Keech & Co.
11 Broadway
New York, N. Y.

Dear Sir:

I beg to acknowledge receipt of your of the 27th.

As Secretary for the P. Lorillard Company and as one of its Attorneys I do not feel that I have any right or duty to aid or advise in any way whatsoever dissensient Stockholders in a controversy against the Company, against the management, or against other Stockholders. What your legal rights are and how to exercise them are questions for your own determination and neither I nor the Company, nor any of its Officers, agents or employees, will interfere in any way in the exercise by you of those rights.

Very truly yours,

(Signed) H. LAURENCE BROOKE,

H. LAURENCE BROOKE,
Secretary.

EXHIBIT 8, ANNEXED TO BILL OF COMPLAINT

P. LORILLARD COMPANY

Tobacco—Cigarettes—Cigars

119 West 40th St.

New York

Feb. 25, 1931.

Mr. Buford Scott,
c/o Scott & Stringfellow,
Richmond, Virginia.

Dear Mr. Scott:

I have for answer your letter to Mr. Belt and your letter to me on behalf of your firm, both dated the 24th.

I am having a copy of the By-Laws of the Lorillard Company prepared and will mail it to you tomorrow.

Before notice of the annual meeting of the stockholders of Lorillard Company were mailed it was definitely decided to bring up the proposed provision of a bonus by-law and the revision of authority to sell its common stock to officers and employees; this was the reason for the wording of the notice and enclosing therewith copies of the proposed resolutions for such purposes.

Stock that has been contracted for by the officers and employees of the company but not yet paid for will be voted, as are all other issued shares, by the record holders. The stock that is authorized but not contracted for does not vote at all.

Yours very truly,

H. LAURENCE BROOKE,
Secretary.

EXHIBIT 9, ANNEXED TO BILL OF COMPLAINT

P. LORILLARD COMPANY

JERSEY CITY, N. J.

February 14, 1931.

To the Stockholders of P. Lorillard Company:

Notice is hereby given that the Annual Meeting of the Stockholders of P. Lorillard Company, a New Jersey Corporation, will be held at the principal office of the Company, Room 803, 15 Exchange Place, Jersey City, N. J., on March 10, 1931, at 11:00 o'clock in the forenoon, for the election of Directors; for the amendment of the existing Bonus By-Law of the Company, draft of which proposed amendment is enclosed; for the revision of Resolutions heretofore adopted by the Stockholders providing for the sale of Common Stock of the Company to its employees, draft of which proposed revision is enclosed and for the transaction of such other business as may properly come before the meeting.

H. LAURENCE BROOKE,
Secretary.

If unable to be present in person, do not fail to sign and return the annexed proxy, as soon as possible, so that the meeting may be properly held.

Exhibit 9, Annexed to Bill of Complaint

PROXY

KNOW ALL MEN BY THESE PRESENTS,

That, the undersigned, hereby constitutes, appoints and directs Benjamin L. Belt, William R. Perkins, and H. Laurence Brooke, or any of them, in the name, place and stead of the undersigned, to attend as the attorneys and agents of and for the undersigned at a meeting of the Stockholders of P. Lorillard Company, a New Jersey Corporation, to be held on the 10th day of March, 1931, at 11:00 o'clock in the forenoon, at the office of the Company, Room 803, 15 Exchange Place, Jersey City, N. J., as well as at any and all adjournment or adjournments of such meeting, and to vote as the proxy of the undersigned thereat upon and with respect to the election of Directors, the amendment of the existing Bonus By-Law of the Company, the revision of the Resolutions heretofore adopted by the Stockholders providing for the sale of Common Stock of the Company to its employees and the transaction of such other business as may properly come before said meeting or any adjournment thereof, according to the number of votes the undersigned would be entitled to cast if then personally present, and to do all such acts and things as may be necessary or proper in order to carry out the Resolutions adopted and the actions taken by said meeting or any adjournment thereof, hereby giving to said attorneys and agents, or any of them, power to substitute another or others in their or his stead and ratifying and confirming all that the attorneys and agents of the undersigned, or any of them, or any

substitute or substitutes for any of them, may do by virtue hereof. This proxy shall be deemed dated on the date set for the meeting herein mentioned, unless a different date is inserted below.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this.....day of....., 1931.

.....(SEAL)

Affidavit of James H. Scott, Jr., Annexed to Bill of Complaint.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

JAMES H. SCOTT, JR., being duly sworn according to law, on his oath deposes and says:

I am one of the complainants above named and own in my own right the number of shares of common stock of P. Lorillard Company set opposite my name in the bill of complaint with which I am familiar. I have read the bill and say generally that the facts therein stated are true to the best of my knowledge and belief.

I know that the other complainants herein are large stockholders and I am credibly informed that the said bill correctly states the amount of their holdings.

The exhibits attached to the bill of complaint are true copies of the documents they purport to be.

The first information I had, and, so far as I know, the first information any of the complainants had of the propositions set out in the bill of complaint to modify the Bonus By-law and the Stock Purchase Plan was from the receipt of the President's letter dated February 14th, which contained a copy of the proposed revision of the By-law and authority to sell the stock, but did not contain the original Bonus By-law. I and my associate non-employee stockholders immediately commenced to study the proposition and soon became convinced that the criticisms, contained in the bill of complaint, were proper.

Affidavit of James H. Scott, Jr., Annexed to Bill of Complaint

I am reliably informed that on the 26th day of February, 1931, personal demand was made by Mr. John Kearns, as representative of me and my associates, at the office of the corporation in the City of New York, for a copy of the list of stockholders. I am informed that a copy of the list was refused Mr. Kearns, but that it was intimated by an officer of the company that he would be permitted to see the stock list at the office of the Transfer Agent of the corporation. However, when Mr. Kearns again repeated his demand on the 27th day of February at the office of the corporation in New York City, access to the said stockholders' list was refused him, either at the office of the corporation or at the office of the Transfer Agent.

I then came to New York and visited the office of the company in New York City, and on the 27th of February requested access to the stock list of the company, with a reasonable opportunity to make a copy thereof during business hours, leaving with H. Laurence Brooke, the Secretary of the corporation, a letter, a copy of which is filed with the bill of complaint, marked Exhibit 6. Refusal of access to the stock list was again made, this time in writing. The said letter of refusal is attached to the bill of complaint as Exhibit 7.

On the 27th day of February, 1931, I also made application for access to said stock list at the principal office of the company in the City of Jersey City in the State of New Jersey, and refusal was again made. Finally on the 28th day of February, 1931, I was shown a list of the stockholders at the principal office of the corporation in Jersey City,

and was told that I might make extracts therefrom, but was refused the right to take a copy of the list, although I had arranged to have the same photographed, so that the officers of the corporation would not be inconvenienced by me in taking the said list. I am still refused the right to make a complete copy of the said list.

The list contains a great number of names, the exact number of which is not known by me.

The figures shown in paragraph 1 of the bill of complaint are correct as shown by the balance sheet of the company.

The figures shown in paragraph 3 of the bill of complaint were taken from sources which I believe to be reliable, and I believe the calculations made from the said sources are correct.

I am informed and believe that since the date of the authorization of the sale of certain stock of the corporation to its employees at $30 per share, as alleged in Paragraph 6 of the bill of complaint, the stock has sold on the New York Stock Exchange for more than $45 per share, and for less than $9 per share, and that the present price of the stock on the New York Stock Exchange is approximately $17 per share.

It is my belief, based on the balance sheet issued by the company as of December 31, 1931, that the present book value of the stock of the corporation is more than $21 per share, without including any estimate of the value of good will, and that the good will is carried by the company at the equivalent of over $11 per share.

Affidavit of James H. Scott, Jr., Annexed to Bill of Complaint

There have been issued at least 74,199 shares of the employee stock pursuant to the original By-law and under the resolution referred to in the President's letter as having been passed on March 10, 1925. My information with respect thereto is based upon a calculation made by me of the authorized stock listings issued by the company at the time of its application to have said stock listed on the New York Stock Exchange. I believe that all of said stock is issued and substantially all of it stands in the name of H. Laurence Brooke, Agent. Mr. Brooke is also the Secretary of the corporation.

The directors of the company are correctly named in the bill. Mr. Belt is the President of the company; Mr. H. Laurence Brooke is the Secretary of the company, and I am informed that Mr. William R. Perkins is employed as counsel by the company. These three are the persons named in the Proxies sent out to stockholders by the management of the corporation to be used at the annual meeting to be held on March 10, 1931. I am reliably informed that all members of the Board of Directors are either officers or employees of the company.

(Signed) JAMES H. SCOTT, JR.

Subscribed and sworn to before me
this 2nd day of March, 1931.

(Signed) ARTHUR F. COLE
A Notary Public of New Jersey.

Order to Show Cause.

Filed March 4, 1931

Upon reading and filing the duly verified bill of complaint, and the exhibits thereto annexed, it is on this 4th day of March, 1931, on motion of McCarter & English, Solicitors for the Complainants, ORDERED that the defendants in said bill of complaint named, show cause before the Court at the Chancery Chambers in the City of Jersey City on Monday, the 16th day of March, 1931, at ten o'clock in the forenoon, or as soon thereafter as they may be heard, why an injunction should not issue as prayed for in the bill of complaint,

AND IT IS FURTHER ORDERED that in the meantime, and until otherwise directed the meeting of the stockholders set for the 10th day of March, 1931, except to adjourn the same, be and the same is postponed until the further order of the Court, and that the said P. Lorillard Company, its officers, agents and tellers be restrained until permitted by this Court, from permitting a vote to be had at a stockholders' meeting upon the proposed revision of the bonus by-law, and of the authority to sell stock in said bill of complaint referred to, and that the said company, its officers, agents and tellers be restrained from receiving the vote upon the proposition of adopting the proposed revision of authority to sell stock of the 74,199 shares of employees stock already issued and outstanding, or such part thereof as has not yet been fully paid for, or any other stock owned by said officers and employees, and also from releasing the purchasers of said 74,-199 shares, or whatever number of shares of em-

ployees stock has been already issued, or agreed to be bought, from the obligations to purchase the same.

AND IT IS FURTHER ORDERED that within one day from the date hereof, a true copy of the said bill of complaint, affidavit and exhibits, which copy need not be certified, be served upon the statutory agent of the said P. Lorillard Company.

Respectfully advised,

E. R. WALKER,
C.

JOHN O. BIGELOW,
V. C.

Notice.

Served March 6, 1931

To:

McCarter & English, Esqs.,
Solicitors of Complainants,
Lefcourt Building,
Newark, N. J.

Please take notice that on Monday, March 9, 1931, at 2 P. M. on that day or as soon thereafter as counsel can be heard, at the Chancery Chambers in the City of Jersey City, we shall apply to the Honorable John O. Bigelow, or to such other Vice Chancellor as may then and there be sitting for the Chancellor, for an order modifying the order to show cause made and entered herein on March 4, 1931, in such manner as will permit the annual meeting of the stockholders of the defendant Company to be held and conducted on Tuesday, March 10, 1931, pursuant to the statute in such case made and provided and to the by-laws of the Company, and agreeably to the notice of said meeting heretofore duly mailed to all stockholders of the Company of record at 3 P. M., being the close of business, on February 9, 1931; and to permit the stockholders of defendant Company at their said annual meeting to transact any and all business that may lawfully be brought before the same including the right to vote for and elect directors of the Company for the ensuing year or until their successors are duly elected and qualified, the right to vote for or against the proposed amendment of the existing bonus by-law of the Company, either in the form proposed and mailed to stockholders with the notice of said meeting or in such modified or different form

as the stockholders may by their vote determine, the right to vote upon the question of a revision of the resolutions heretofore adopted by the stockholders providing for the sale of common stock of the Company to its employees, and the cancellation of the contracts heretofore entered into pursuant thereto, either in the form proposed and mailed to stockholders with the notice of said meeting or in such modified or different form as the stockholders may by their vote determine and the right to vote upon such other resolutions or matters as may be brought before the meeting.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with
the Defendant, P. Lorillard Company.

Oral Opinion of Bigelow, *V. C.*, on Motion to Vacate Preliminary Restraint.

Delivered March 9, 1931

Transcript of the stenographic report of the oral opinion given in the above-stated cause, on motion at the Chancery Chambers in Jersey City, on Monday, March 9, 1931, by his Honor John O. Bigelow, Vice Chancellor.

Bigelow, V. C.: (orally)

The disposition of this motion seems to me to depend upon a balancing of conveniences, even more than in the case of most interlocutory motions, because I have to decide this motion immediately. If I should wait until 11 o'clock tomorrow morning before deciding it, the delay in itself would be in effect a denial of the application. The only inconvenience that the defendants would suffer from the adjournment of the stockholders' meeting, will be that they may have to fix a new record date, that is a date which determines the persons who will have the privilege of voting at the meeting. That does not seem to me to be a grave matter. However, even that slight inconvenience has its weight; this Court should not interfere with the stockholders' meeting unless ground for interference appears. I do not think that there is need for the continuance of the restraint against the election of the directors. I understand from the argument of counsel that there is no basis for that restraint, except the thought that possibly at a later time the stockholders might be dissatisfied with the present management and wish to elect others in their stead.

Oral Opinion of Bigelow, V. C., on Motion to Vacate Preliminary Restraint

As to the other two matters, I will deny the motion to vacate the injunction. It might be if I had more time to look up the matter and could consider the argument more carefully I would come to a contrary conclusion. A vacation of the injunction would deprive complainants of all the advantage which they might get from presenting their side of the case fully to the stockholders. I take notice of the fact that in most stockholders' meetings arguments are useless, that the final campaign is waged in getting proxies and when the latest proxies are obtained, the battle is over.

I suppose in the ordinary case, the notice of stockholders' meetings prescribed by the statute is sufficient and this Court has no authority to decide otherwise. But where the directors themselves are interested as here alleged, in both branches of this proposed action,—the bonus and new stock,—I doubt whether the bare statutory notice is enough.

Order Modifying Restraint.

Filed March 9, 1931

Application having been made to modify the restraint imposed theretofore in this cause and the Court having heard counsel for and against,

It is on this 9th day of March, 1931, ORDERED:

1. The restraint imposed on the defendant in and by the order heretofore made herein by the order of March 4, 1931, be and it is modified in the following and no other respect, to permit the meeting to proceed with the election of directors.

2. In all other respects the restraint of the order of March 4, 1931, is continued until the further order of the Court.

3. The said meeting after the election of directors is hereby adjourned until the 21st day of April, 1931, at the same hour and place.

4. February 9, 1931 (at 3 P. M.) shall be the record date to determine the stockholders entitled to vote at said adjournment or any further adjournment thereof.

Respectfully advised,

E. R. WALKER,
C.

J. O. BIGELOW,
V. C.

Order of Adjournment.

Filed March 13, 1931

Upon reading the consents of counsel hereunto endorsed,

It is on this 13th day of March, 1931, ORDERED that the return day of the order to show cause made and entered herein on the 4th day of March, 1931, be and the same is hereby adjourned from the 16th day of March, 1931, to the 30th day of March, 1931, at the same hour and place;

And it is FURTHER ORDERED that the annual meeting of stockholders of the defendant Company, heretofore adjourned by the order of this Court made and entered herein on the 9th day of March, 1931 (following the election of directors on the 10th day of March, 1931), to the 21st day of April, 1931, be and the same is hereby further adjourned from said 21st day of April, 1931, to the 5th day of May, 1931, at the same hour and place;

And it is FURTHER ORDERED that the defendant's solicitors have leave to serve upon the solicitors of the complainants on or before the 23rd day of March, 1931, affidavits to be read at the hearing upon the return of said order to show cause, as hereby adjourned.

And it is FURTHER ORDERED that except as hereinabove modified, said order to show cause made and entered on the 4th day of March, 1931, and said modifying order made and entered herein on the 9th day of March, 1931, be and they are hereby continued in full force and effect.

Respectfully advised,

E. R. WALKER,
C.

JOHN O. BIGELOW,
V. C.

Notice.

Served March 24, 1931

To:

McCarter & English, Esqs.,
Solicitors for Complainants,
Lefcourt Building,
Newark, N. J.

Sirs:

Please take notice that the affidavits served upon you herewith (with the exhibits thereto annexed) will be read on behalf of the defendant, P. Lorillard Company, upon the return of the order to show cause made and entered herein on the 4th day of March, 1931 (as subsequently modified and adjourned), and that we shall apply at the same time and place for an order dismissing the bill of complaint for want of equity and for lack of equitable jurisdiction in this Court with respect to the forthcoming vote of stockholders upon the proposed amendment of the bonus by-law of the Company and upon a revision of the resolutions authorizing the sale of common stock to employees, (the election of directors of the Company having been held by permission of this Court and the question of cancellation of existing contracts for the sale of shares of common stock to employees having been eliminated as an issue in this suit by the offer of counsel of the defendant heretofore made and hereby reaffirmed).

Pitney, Hardin & Skinner,
Solicitors for and of Counsel with the Defendant, P. Lorillard Company.

Affidavit of Benjamin L. Belt for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

BENJAMIN L. BELT, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is Benjamin L. Belt; I reside at Lakewood, N. J.; I am over 21 years of age; and I am, and since March 1924 have continuously been, the president of P. Lorillard Company, a defendant in the above entitled cause. I have been a director of said defendant since its organization in November 1911 and was a vice-president until chosen president.

The by-laws of said defendant (Art. I) fix the number of directors at 11 and provide that "a stockholder need not hold more than one share of the stock of the corporation to qualify him to be a director".

Attached hereto as a part hereof, marked "Exhibit 1", is a copy of Art II of said by-laws. It provides, among other things, that the annual meeting of the stockholders of said defendant "for the election of directors and such other business as may properly come before the meeting shall be held at the principal office of the Company in New Jersey on the second Tuesday of March at 11 o'clock in the forenoon", that for meetings of stockholders a record date may be fixed by the directors instead of closing the transfer books and that at said annual

meeting "any business may be transacted without notice of the object of such annual meeting".

Sec. 17 of the General Corporation Act of New Jersey, as amended, provides that

> "At any annual meeting for the election of directors any business may be considered and transacted which may properly be brought before a general meeting of the stockholders and, if due notice be given, any business may be considered and transacted which under any of the provisions of this Act may be considered and transacted at a special meeting of stockholders."

The board of directors of said defendant on January 28, 1931, under authority of these by-laws duly adopted the following resolution:

> "RESOLVED: That (in lieu of closing the Stock Transfer Books) 3 P. M., Monday, February 9, 1931, be and the same hereby is fixed as a record date for the determination of the Stockholders of the Company entitled to notice of and to vote at the Annual Meeting of Stockholders to be held on March 10, 1931."

Attached hereto as a part hereof, marked "Exhibits 2-a, 2-b and 2-c" respectively, are (a) the notice dated February 14, 1931, to the stockholders of the annual meeting of the stockholders of said defendant to be held on the second Tuesday in March, 1931, with form of proxy for said meeting attached thereto, (b) the drafts mentioned in said notice of the proposed amendment of the bonus by-

law and of the proposed revision of the resolutions authorizing the sale of common stock to employees of said defendant and (c) my letter of explanation to the stockholders, dated February 14, 1931, which accompanied said notice.

By these exhibits the stockholders were informed that in addition to the election of directors there would be considered and voted upon at such annual meeting (a) a proposed and enclosed amendment of the existing bonus by-law, (b) a proposed and enclosed revision of the existing resolutions authorizing sale of common stock to employees as well as (c) the cancellation of the contracts under which shares of common stock had been sold under such existing resolutions.

The stockholders were fully informed that those named as proxies in the form of proxy attached to said notice, namely, Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, were officers and employees of said defendant. Mr. Brooke's name is signed to the notice as "Secretary". Accompanying the notice was a letter signed by me as "President". Mr. Perkins is a well known lawyer of New York City who has been Counsel for said defendant for a great many years. As the proxy authorized any one of these gentlemen to act under it every stockholder who executed such a proxy knew and thereby consented that an officer or employee of said defendant might act under it for such stockholder. These names have often heretofore appeared thus in forms of proxies attached to notices for meetings of stockholders of said defendant.

On March 4, 1931, there was served upon said defendant an ex parte order entered in the above

entitled cause, requiring the defendants therein to show cause at the Chancery Chambers in the City of Jersey City, New Jersey, on Monday, the 16th day of March, 1931, at 10 o'clock in the forenoon, or as soon thereafter as they may be heard, why an injunction should not issue as prayed for in the bill of complaint in the above entitled cause, and in the meantime and until otherwise directed, postponing the holding of said annual meeting and enjoining all action thereat except to adjourn the same.

On March 9, 1931, after argument of counsel an order was entered which modified the aforesaid order so as to allow the election of directors to occur at said annual meeting on March 10, 1931, and in all other respects adjourned said annual meeting to the same hour and place on Tuesday, April 21, 1931, and fixed and continued 3 o'clock P. M. on February 9, 1931, as the record date for determining the stockholders entitled to vote at such adjourned meeting and all adjournments thereof.

By consent order entered March 13, 1931, the return day was adjourned to March 30, 1931, at the same hour and place and the annual meeting was further adjourned to May 5, 1931, at the same hour and place.

I have carefully considered the bill of complaint in the above entitled cause. Behind it is the desire of Messrs. Scott & Stringfellow, a stock brokerage concern of Richmond, Virginia, for representation on the board of directors of said defendant in order to obtain confidential and advance information

about the business and affairs of the said defendant, such as its sales, earnings and expenditures, otherwise unavailable to them. Various of the other complainants are customers of said brokerage firm or connected with it through employment or otherwise.

On Monday, March 2, 1931, at the invitation of Col. Henry W. Anderson, of Richmond, Virginia, an attorney for said firm, Mr. H. Laurence Brooke and myself saw Col. Anderson and Mr. Buford Scott, a member of said firm, in Washington, D. C., about the matters in controversy here and the latter then proposed that there should be elected to the board of said defendant one or more directors agreeable to them, preferably from Richmond, Va. Mr. Scott was quite insistent on this. On the evening of Tuesday, March 3, 1931, I saw Mr. Frederick W. Scott, the senior member of said firm, at his invitation, at the Hotel Plaza in New York City. Among other things, he then stated to me, in substance, that they should have one or more representatives on the board of directors of said defendant as said board was now composed entirely of those employed by said defendant and they were being denied the information concerning the affairs of the defendant which was available to a director.

The following morning I informed Mr. Scott that after consulting other officials of the defendant company we saw no reason not to present to the annual meeting the matters which the notice stated would come before that meeting. Later that same day this suit was begun.

It has been the policy of said defendant from its organization to have as its directors only those

who give their whole time and attention to its affairs. It is a well known fact that all the directors of the defendant now are, and always heretofore have been, exclusively those who are employees of the defendant and give their whole time and attention to its business and affairs. This policy with respect to directors has been uniformly supported by the stockholders of said defendant, who each year since its organization have consistently forwarded their proxies naming the president or others connected with said defendant as their proxies and agents to vote for the election of such employees as directors. I know, therefore, that the view that such a policy is wise and in the best interest of said defendant has thus been indisputably sanctioned by its stockholders for a long period of time.

Exhibit 1 annexed to said bill of complaint is not a true copy of the certificate of incorporation of said defendant as the same exists today, for the reason that it does not include any of the amendments heretofore made in such certificate of incorporation. Attached hereto as a part hereof, marked "Exhibit 3", is a true and complete copy of the certificate of incorporation of said defendant, as amended. The last amendment was authorized at a meeting of the stockholders of said defendant on September 6 and 7, 1929. By said amendment the common stock of said defendant was changed from shares with par value to shares without nominal or par value and it was provided that "the authorized shares of this corporation without nominal or par value may be issued and sold from time to time for such consideration and upon such terms

and conditions as from time to time may be fixed by the board of directors". This provision is in accordance with Sec. 121 of said General Corporation Act, as amended, which provides that such a corporation as the said defendant "may issue and may sell its authorized shares without nominal or par value for such consideration as may be prescribed in the certificate of incorporation or any amendment thereof or, if so provided in the certificate of incorporation, as from time to time may be fixed by the board of directors".

None of the complainants has been denied any right of access to or examination of or the making of excerpts or extracts from any of the stock records or stock books or stock lists of said defendant. What occurred in this respect is set forth in the affidavits of H. Laurence Brooke, the secretary of said defendant, dated March 6, 1931, of Clarence E. Currey, one of the assistant secretaries of the New York Trust Company, the New York transfer agent of said defendant, dated March 6, 1931, of Irving L. Bennett, one of the assistant secretaries of said New York Trust Company, dated March 6, 1931, and of Alfred F. McCabe, an assistant secretary of The Corporation Trust Company, the statutory and transfer agent of said defendant in New Jersey, dated March 7, 1931, which four affidavits are filed herewith.

In conformity with the statutes in such case made and provided (and especially Secs. 33, 40 and 44 of said General Corporation Act, as amended) said defendant has maintained a principal office in the State of New Jersey and an agent in charge thereof, wherein there has been kept its stock

and transfer books for the inspection of all who are authorized to see the same and for the transfer of stock. Said office of said defendant is at 15 Exchange Place, Jersey City, New Jersey, and the agent in charge thereof is The Corporation Trust Company. At such office there has been kept the transfer books, in which the transfer of stock of said defendant has been registered, and the stock books of said defendant, which have contained the names and addresses of the stockholders and the number of shares held by them respectively; and such books have at all times during the usual hours for business been open to the examination of every stockholder. In addition, at least 10 days before said annual meeting of stockholders held on March 10, 1931, the directors duly caused to be made a full, true and complete list, in alphabetical order, of all the stockholders entitled to vote at the ensuing election, with the residence of each and the number of shares held by each, and this list was at all times during the usual hours for business kept at such principal and registered office and open to the examination of any stockholder at said office, including complainants.

Said defendant also maintains a New York transfer agent for its stock. Such transfer agent is the New York Trust Company, a New York corporation with its principal office at 100 Broadway in the City of New York. Said transfer agent has and keeps in its possession the books known as the stock books of said defendant, containing the names, alphabetically arranged, of all persons who are stockholders of said defendant, showing their places of residence, the number of shares of stock

held by them respectively, and the time when they respectively became the owners thereof. Such books have been open daily during business hours for inspection and in order to make extracts therefrom by any stockholder of said defendant, including complainants.

ELECTION OF DIRECTORS

The affidavits of H. Laurence Brooke, Todd Wool, Leslie E. Clemens and Peter B. Prentis, each dated March 20, 1931, are filed herewith. These four affidavits set forth, in substance, what occurred at the election of directors at the annual meeting of stockholders of said defendant on March 10, 1931. I also file herewith the affidavits of Edward C. Hunter and of William J. Halley, each dated March 20, 1931. These affidavits show that these gentlemen acted as inspectors of election at the election on March 10, 1931, and how they performed their duties in that respect.

At a meeting of the board of directors of said defendant held at 11 o'clock in the forenoon of Wednesday, March 11, 1931, at which I was present, Mr. H. Laurence Brooke, the secretary of said defendant, made a report of what had transpired at the annual meeting of the stockholders of said defendant held March 10, 1931, of which meeting he had acted as chairman. In doing so he stated that there had been placed in nomination as directors Messrs. David H. Ball, Earl J. Bush, William W. Drewry, J. Strother Freeman, George H. Hummel, James T. Keel, Everett Meyer, Alva

H. Shinkle, Harry A. Stout, E. Grayson Weymouth and myself by Mr. Todd Wool, and Mr. James H. Scott, Jr. by Mr. George McCarter, and that the result of the election was that Mr. Scott received 219,082 votes, that I received 1,333,522 votes, and that each of the others received 1,333,022 votes, out of a total of 1,583,995 shares of preferred and common stock present at said meeting in person or by proxy and out of a total of 1,998,780 shares of preferred and common stock issued and outstanding and entitled to vote at such election.

Pursuant to such election, as thus reported, the new board of directors then organized and re-elected myself as president, Messrs. Ball, Bush, Hummel, Meyer and Weymouth as vice-presidents, Mr. Stout as treasurer, Mr. Bush as comptroller, Mr. Brooke as secretary and Mr. L. E. Clemens as assistant secretary and assistant treasurer, of said defendant company.

I have known for a long while the persons thus re-elected as directors. All of them have been connected with said defendant for many years, most of them since its organization, in 1911. They are the important men in the conduct of the affairs of said defendant. Each of them gives, and has been giving during these years, his entire time and attention to the affairs of said defendant and each of them is, and for a long while has been, a bona fide stockholder of said defendant.

Their election did not bring into the board any new person; it was simply a re-election of those who would hold over in the absence of an election and whom the stockholders have heretofore seen

fit to elect and re-elect as directors of said defendant.

I know Mr. James H. Scott, Jr. He is a young man, who has not had any experience in the conduct of a tobacco business and is closely identified with said brokerage firm of Scott & Stringfellow. In my opinion his election as a director would only have been in furtherance of the purpose of that firm to obtain representation on the board of directors of said defendant and would not have been of benefit to said defendant in the conduct of its affairs.

The form of proxy attached to the notice of said annual meeting named the president, general counsel and secretary of said defendant, or any of them, as the proxies and agents of the stockholders signing said proxies. This conformed to the practice of said defendant since its organization of so naming in proxies the president and other officers and employees of said defendant. No question has ever been raised as to the right of the stockholders to name such persons as their agents and proxies until by complainants in said cause. Indeed, Messrs. Scott & Stringfellow and other complainants have heretofore executed and delivered such proxies without question.

The execution and delivery of such a proxy by the stockholder is entirely a voluntary act on the part of the stockholder. Any stockholder may use a form of proxy other than that sent out with the notice of the meeting, or insert in such proxy some other person as the proxy and agent of the stockholder, if the stockholder so desires. Stockholders have so acted with respect to the proxies for said annual meeting of March 10, 1931, and have so

acted with respect to various previous meetings of the stockholders of said defendant. I am advised by counsel for said defendant that no one but the stockholder signing the proxy has any right of selection or objection in that respect and he may select such an officer or employee of said defendant as his agent and proxy, if he so desires.

I am a stockholder in a good many companies; and it has been my observation and experience that it is the universal practice for corporations to attach to the notice of meetings of their stockholders a form of proxy for use by the stockholders which names as the proxies and agents of the stockholders officers, directors and employees of said corporation. As an example thereof, I attach hereto as a part hereof, marked "Exhibit 4", a photostatic copy of a notice, with proxy attached, dated March 12, 1931, for a meeting of stockholders on April 1, 1931, of American International Corporation, a New York corporation. It will be observed that this meeting is for the election of directors of said corporation, that the stockholders "are requested to sign the enclosed proxy and to return it promptly", and that one of the proxies and agents named in said proxy is Mr. Frederick W. Scott, one of the complainants in the above entitled cause. Though the said fact is not disclosed in the notice of such meeting, Mr. Scott is now a director of said American International Corporation, and each of the others named in said proxy is now a director of said corporation.

The receipt and voting of proxies executed by fiduciaries has occurred from year to year without any objection heretofore on that account. Sec. 37

of the General Corporation Act of New Jersey, as amended, provides that "every person holding stock as executor, administrator, guardian or trustee, or in any other representative or fiduciary capacity, may represent the same at all meetings of the corporation and may vote thereon as a stockholder", and Sec. 17 of said Act, as amended, provides that "stockholders may vote at all meetings by proxy in writing."

The by-laws of said defendant provide that the board of directors may appoint two inspectors of the annual election at any time before notice of the meeting at which such election is held, thus placing the selection of the inspectors to that extent in the hands of the management. But the board of directors has never exercised this right. Instead, it has always allowed the stockholders at said meeting to elect their own inspectors. I cannot believe a stockholders' meeting is made void by a failure of the board to appoint inspectors. Such omission is an act in favor of the stockholders as it accords them the privilege of electing inspectors.

I know Messrs. E. C. Hunter and W. J. Halley. Both are employees of said defendant. Their election as inspectors at said election of directors again followed the invariable custom of said defendant dating from its organization. As the proxies have been received for each meeting, certain employees of said defendant have been designated to examine and verify them by the stock list and records and these employees, because of their familiarity with the proxies thus gained, have been used as inspectors of election at the meeting of the stockholders

thereafter held. No objection has ever been made to this practice until at the meeting of March 10, 1931. The large number of proxies received make such practice most desirable, if not necessary, in order to hold the meeting within the time limit prescribed by statute for this purpose. The only requirement of the statute (Sec. 35 of the General Corporation Act of New Jersey, as amended) is that neither inspector may be a director or a candidate for that office, and neither Mr. Hunter nor Mr. Halley was a director or a candidate for that office.

The persons elected as directors were thus the choice of a large majority of the stockholders for that office and what occurred at the election was simply a carrying out of the wishes in this respect of this large majority of the stockholders. The proxies received by the management came from 5,858 stockholders out of a total of 9,009 stockholders entitled to vote. To revise such an election for the reasons urged in that respect (even if this Court had such jurisdiction) is to allow technical objections to defeat the wishes of this large majority of the stockholders and will result simply in the holding over as directors of the very persons who were thus elected on March 10, 1931.

AMENDMENT OF BONUS BY-LAW.

Enclosed with the notice as a part thereof was a draft of a proposed amendment to the bonus by-law. A copy of this draft has been attached hereto as Exhibit 2-b.

Affidavit of Benjamin L. Belt for the Defendant

Attached hereto as a part hereof, marked "Exhibit 5", is a copy of the present bonus by-law which was adopted at the annual meeting of stockholders in 1921.

Every bonus plan has two fundamental features, namely, (1) ascertainment of the amount to be distributed and (2) the distribution of the amount thus ascertained; and many different ways and bases have been adopted and are in force for such purposes.

The present bonus by-law

(1) ascertains the amount to be distributed by deducting from the gross income of said defendant expenses, taxes, losses, interest, preferred dividends and, in addition thereto, "$1.50 per share on its average outstanding issued common stock without nominal or par value and 7% on its average surplus and undivided profits for such year"; and of the "net profits" thus ascertained it takes 15% as the amount to be distributed as bonus;

(2) the amount ascertained as aforesaid is distributed among the officers and employees of said defendant in accordance with their ownership of shares of its common stock, for which purpose such ownership is limited as follows: Of the president, to 3⅓; of a vice-president, to 2%; of the other officers and heads of departments, to 1%; and of other employees, to ½ of 1%, of the average amount of common stock outstanding for the year in question.

The proposed amendment would effect only the following changes in the present plan:

(a) It would reduce from 15% to 5% the amount of "net profits" to be distributed as bonus and increase the amount of "net profits" upon which such percentage operates by eliminating, in ascertaining such "net profits", the deductions of $1.50 per share of common stock and 7% on the surplus which is required by the present bonus by-law. The reason for this change was thus stated to the stockholders in my letter (Exhibit 2-c hereto attached) accompanying the notice of the annual meeting:

> "A copy of the proposed revision of the bonus by-law accompanies the notice; and a copy of the present bonus by-law will be sent any stockholder on application so that comparison may be made if desired. The essential change consists in making the amount to be distributed 5% of the net profits applicable to dividends on the Common Stock instead of 15% of the net profits remaining after deducting 7% on the average amount represented by Common Stock and surplus. For the past several years the terms of this by-law have precluded any bonus distribution and this has proven quite a handicap in view of the bonus being paid by other companies. In this situation a division of such profits for bonus purposes on a 5 to 95 basis between employees and common stockholders is suggested as neither unfair nor excessive."

(b) It would increase the percentages which the various officers and employees may own for this purpose, as follows: For the president, from 3⅓% to 7½%; for a vice-president, from 2% to 5%; for

any other officer or head of a department, from 1% to 2½%; and for other employees, from ½ of 1% to 1%, of the average amount of common stock outstanding for the year in question. It should be carefully observed that this change does not increase the amount of bonus to be distributed, but affects only its division among the officers and employees. These increases are suggested because the depreciation in the market value of the common stock of said defendant has been such that the larger percentages of such shares can be purchased and owned now for practically the same amount of money as could the smaller percentages of such shares when the present bonus by-law was adopted, and there seemed no good reason why officers and employees should not be attracted to invest as much money in the common stock of the defendant in this manner now as was the attraction by the present bonus by-law for this purpose when it was adopted.

(c) The present bonus by-law provides that "anything in this article to the contrary notwithstanding, any shares of said common stock so owned during the whole of the last six months of the calendar year 1921 shall be deemed to have been so owned for all the purposes of this article for the whole of the calendar year 1921". In lieu of this provision the proposed amendment provides that "anything in this article to the contrary notwithstanding, any shares of said common stock acquired by an officer or employee from the company at any time in 1931 shall be deemed to have been owned by such officer or employee for all the purposes of this article for the whole of the calendar year 1931".

Here again the change does not affect any increase in the amount of bonus to be distributed but has to do entirely with the division of such amount among the officers and employees. In the present bonus by-law the provision allows the shares to be acquired in any manner whatever. In the proposed amendment the provision applies only to shares acquired "from the company". In view of this restriction it was thought best to allow the shares to be acquired at any time during the year rather than only in the first six months of the year, because shares could be acquired from the company only by sale under resolutions authorizing sale of shares to officers and employees and such sales would be made to those whose previous services were thought sufficiently long and meritorious to entitle them to make such purchases.

The proposed amendment makes no change in those entitled to participate. The stockholders well know that under the proposed amendment of the bonus by-law, as under the present bonus by-law, all the directors of the defendant would be eligible to participate. Since the organization of the defendant only those had been its directors who were its employees, giving their whole time and attention to the business and affairs of the defendant. The proposed amendment clearly indicated that the president and the vice-presidents of defendant were eligible to participate under the proposed amendment. Sec. 13 of said General Corporation Act requires the president to be a director and Sec. 1 of Art. IV of the by-laws of defendant provides that "the directors shall annually choose from their own number a president and five vice-presidents".

Thus, by virtue of this notice through the by-laws, as well as the long established policy of defendant, the stockholders had full information that directors would be eligible to participate under the proposed amendment as they were, and had been, eligible to participate under the present bonus by-law.

The directors have no discretion whatever under the proposed amendment of the bonus by-law. Such amendment, like the present bonus by-law, provides that it may be amended or repealed only by vote of the stockholders. And the ascertainment and distribution of the bonus under the proposed amendment, as under the present bonus by-law, will not be an act of the board of directors in any respect whatever, but a calculation and distribution by defendant's treasurer, who is charged by the bonus by-law with that duty in strict conformity to the terms of the bonus by-law as adopted by the stockholders.

The present bonus by-law has been in force for said defendant since 1921. It is based on a well known bonus plan. The proposed amendment does not change it in principle. The proposed amendment merely eliminates certain items of deduction in ascertaining "net profits", reduces the percentage of these "net profits" which may be distributed as a bonus, and increases the number of shares that may be owned by officers and employees as a basis for participation in such distribution. A complete copy of the proposed amendment was enclosed with the notice. My letter accompanying the notice promised to send to any requesting stockholder a copy of the present bonus by-law for purposes of comparison. There were only a few such requests.

The change in the bonus by-law has been suggested because it will give employees some distribution when their efforts and the company's earnings are being put so largely behind the brand "Old Gold". When that brand comes to contribute largely to earnings, as we hope and like brands for other companies have, the proposed amendment will yield less for distribution than the present bonus by-law, for it causes a decrease in bonus over the present bonus by-law when earnings get back where they were in 1925. The following tabulation will illustrate by the years 1925-1930:

Year	Earnings on Common	Bonus Under Present By-Law	Bonus Under Proposed Amendment
1925.....	$4,849,899.06	$275,883.86	$242,964.41
1926.....	3,325,665.65	21,978.15	166,589.20
1927.....	1,699,254.64	None	84,990.37
1928.....	1,025,896.36	None	51,894.30
1929.....	545,123.86	None	24,382.78
1930.....	2,822,831.02	None	140,014.62

Whether or not such an amendment should be made is a question solely for the stockholders, who should be allowed to vote upon the proposed amendment for that purpose.

PROPOSED REVISION OF AUTHORITY TO SELL STOCK TO EMPLOYEES.

At the annual meeting of the stockholders of said defendant held March 10, 1925, the following resolution was adopted:

"RESOLVED: That the Board of Directors of the Company be and it hereby is authorized to sell at not less than $30 per share, not exceeding 100,000 shares, of the authorized and unissued Common Stock of the Company to such employee or employees of the Company, at such time or times, on such term or terms, in such manner or manners and in such amount or amounts as may be determined by the said Board of Directors at any time or from time to time."

At a special meeting of the stockholders of said defendant held September 7, 1929, the following resolution was adopted:

"RESOLVED: That the Board of Directors of this Corporation be and it hereby is authorized to issue and sell at not less than $20 per share not exceeding 150,000 shares of Common Stock without nominal or par value out of the increased number of such shares this day authorized by the stockholders and unissued, to such employee or employees of the Corporation at such time or times on such term or terms in such manner or manners and in such amount or amounts as may be determined by said Board of Directors at any time or from time to time."

As appears by the record, the following complainants voted in favor of said resolution of September 7, 1929, namely: Messrs. Scott & Stringfellow, James H. Scott, Jr., Buford Scott, Edward C. Anderson, Walter S. Robertson, Marion H. Fitz-

gerald, James T. Parkinson, Robert G. Thornton and Mrs. Mary B. Lafferty.

At the time each of said resolutions was passed the minimum price fixed therein was substantially lower than the then market price of the shares of common stock of said defendant.

There are now outstanding contracts for the sale at $30 a share of 53,938 shares of common stock under the authority of the resolution of March 10, 1925.

No shares of stock have been sold under the authority of said resolution of September 7, 1929, notwithstanding the minimum price stated therein is $20 per share. The reason for this is that the decrease in the market price of said stock, which induced the establishing of this minimum of $20 per share, has continued so that the employees have been unwilling to purchase said shares at $20 per share, having ample opportunity to purchase them in the market at a much lower figure, indeed, as low as $9 per share.

This situation has totally deprived the employees of any benefit from the authority to sell common stock to them and led me to think it wise and in the best interest of the stockholders to request the stockholders to reduce the minimum price to a figure more consonant with the prevailing market price of said stock.

For this purpose a proposed revision of these resolutions was enclosed with the notice of the meeting which in this respect reads as follows:

> "RESOLVED: That the resolution passed March 10, 1925, authorizing the Board of Directors to sell to employees not exceeding 100,-

000 shares of Common Stock at not less than $30. per share and the resolution passed September 7, 1929, authorizing the Board of Directors to sell to employees not exceeding an additional 150,000 shares of Common Stock at not less than $20 per share, are hereby amended and consolidated so that in lieu of said resolutions the Board of Directors shall be and it is hereby authorized to issue and sell at not less than $10. per share not exceeding 250,000 shares of the Common Stock of this Company, without nominal or par value, to such officers and employees of the Company, at such times, on such terms and in such manner and amounts as may be determined by said Board at any time and from time to time;

"RESOLVED FURTHER: That any contracts now existing for the sale to employees of Common Stock under said resolution of March 10, 1925, may be by said Board cancelled or altered in conformity with the above amendment of said resolution, as said Board may determine."

Of this proposed revision my letter to the stockholders which accompanied the notice said:

"The stockholders authorized on March 10, 1925, the sale to employees of 100,000 shares of Common Stock at not less than $30. per share and on September 7, 1929, the sale to employees of an additional 150,000 shares at not less than $20. per share. But unfortunately, though these minimum prices were less

at the time than market value, conditions so changed that none of the 150,000 has been sold and, while contracts for the sale of some of the 100,000 shares were made, these contracts are proving burdensome instead of beneficial as they necessarily prevent a disposition by the purchaser for a period of years in order to retain the interest of the purchaser through stock ownership. What is now suggested is the revision (see copy enclosed) of these authorizations, and the contracts made under them, to a price more consonant with market conditions, say not less than $10. per share. Such action is recommended as in keeping with what other companies are doing and necessary to give proper effect to the desire of the stockholders, already expressed, to interest employees in the Company through stock ownership."

The bill of complaint challenges the fairness of the board of directors in its exercise of the powers that would thus be conferred and intimates that, in disregard of the interests of the stockholders and the defendant, the board of directors can and will sell to its members the shares thus authorized to be sold in such a way that they can be quickly resold by such members at a profit and thus the authorization amount merely to a payment to such members.

The revision would not in any wise change the previous resolutions as respects either (1) those who might purchase or (2) the discretionary authority with which the stockholders had twice been

willing to invest the board of directors in this respect or (3) the number of shares that might be so sold. The only thing involved is the extent to which the common stockholders of defendant are willing to reduce the minimum price as respects the sale of the said shares. In all other respects the authority and discretion already vested by these resolutions in the board of directors remains unchanged. The provisions of the certificate of incorporation of said defendant confer on the board the equal discretionary powers for said certificate authorizes the board of directors to issue and sell the authorized common stock of said defendant "from time to time for such consideration and upon such terms and conditions as from time to time may be fixed by the Board of Directors".

The history of the action of the board of directors under the authority conferred by said resolutions is a complete refutation of these allegations of unfairness. All the sales that have been made under such resolutions have been made under a form of contract, copy of which is hereto attached as a part hereof, marked "Exhibit 6", which, among other things, requires the stock to be paid for in installments over a series of years, makes such stock deliverable only when paid for in full, and prevents the shares so sold from being transferred or delivered to the buyer prior to the expiration of five years from the date of the contract, notwithstanding payment in full, except in the event of the death of the buyer and except, further, that if the buyer was or became 45 or more years of age such transfer and delivery could be made to him after the expiration of three years from the date

of the contract upon payment of the purchase price in full. For the protection of the defendant these shares were required to stand in the name of an agent appointed by the defendant for that purpose, who with respect thereto has full voting power as well as the right to receive and apply to the purchase price all distributions upon said shares.

I am advised that the whole question is the extent to which the stockholders may be willing further to waive their pre-emptive right as respects the minimum price at which such shares may be sold to employees; that this is a matter resting solely in the discretion of each stockholder as respects the common stock he owns and that he is entitled to vote thereon as he may desire.

CANCELLATION OF CONTRACTS SELLING SHARES TO EMPLOYEES

My belief was, and still is, that in the event the stockholders should see fit to reduce to $10 per share the minimum price at which shares of common stock may be sold to employees under the terms of the resolutions of March 10, 1925, and September 7, 1929, it is only fair and in the best interest of the stockholders that the existing contracts for the sale of shares to employees under the resolution of March 10, 1925, should be reduced to the price at which such shares of stock may then be sold to other employees. To do otherwise would be to create dissatisfaction among the officers and employees.

The bill of complaint alleges that "since the date of authorization of the sale of said stock at $30 per

share, the stock has sold on the New York Stock Exchange for more than $45 per share, and that it is therefore possible that an officer or employee of the company, if he had bought the stock for $30 a share, might have sold this stock for $45 a share, could have since bought it on the market for less than $9 a share, and could now be relieved from his contract to purchase the stock at $30 per share, and would also be enabled to buy back the stock at $10 per share."

Said allegation is negatived by the terms of said contract which prevented the purchaser thereunder from disposing of his shares so bought. It also completely overlooks the fact that such employees are not, like some of the complainants, dealers upon the stock market and in close touch with its movements. They would not be of the service to the defendant that they are if they indulged in the purchase and sale of stock as the said quotation suggests they theoretically might have done.

It has been suggested by counsel, however, that since in some of the contracts that might be cancelled the purchasers are directors of said defendant company and this fact was not specifically mentioned in the notice to the stockholders, it might be advisable to exclude the matter of the cancellation of such contracts with directors from the consideration of the stockholders at any meetings held pursuant to such notice, although the facts with respect to such contracts could be available at such meeting and under the aforesaid statute and by-laws any business may be transacted at an annual meeting though not stated in the notice thereof. Accordingly I have determined, and definitely con-

clude and state, that the stockholders will not be requested at any meeting held pursuant to such notice to vote upon the cancellation of any contract which sells shares under the resolution of March 10, 1925, to a director or to anyone else.

VOTING "AGENCY" STOCK

As will appear from the said form of contract (Exhibit 6 hereto attached) under which shares of stock have been sold to employees pursuant to the authority of said resolution of March 10, 1925, said shares were not transferred and delivered to the purchasers, but as provided in said contract were issued

> "For the purposes of this contract in the name of G. T. Minnegerode, Agent, and his successors as Agent, where they shall remain until delivered in accordance with the terms hereof, said Minnegerode and his successors possessing all voting rights upon and with respect thereto and the right to pledge the same as collateral security for the borrowing of money to finance this sale."

Said contract further provides that "all distributions in money, rights or property (whether by way of dividend or otherwise) shall be made and stock dividends on the shares issued to such Agent, who shall dispose of any stock, property and rights so received to the best advantage, and the proceeds thereof, as well as all cash so received shall be applied by him on said installments" of the purchase price of the shares covered by such contract.

Such contract further provides that if the said Minnegerode should cease to be such agent "his successor shall be the person chosen for that purpose by the Board of Directors of said Company".

Pursuant to the foregoing, the said Minnegerode having resigned as secretary of the defendant and as such agent, H. Laurence Brooke, who succeeded said Minnegerode as secretary of said defendant, was chosen by the board as such agent, since which time he has continued to be, and is now, the agent under such contracts.

Accordingly, the shares now embraced in such contracts stand of record in the name of H. Laurence Brooke, Agent and as such stockholder of record he has uniformly voted the shares covered by such outstanding contracts at all meetings of the stockholders of said defendant.

It is the right of said Brooke as such agent to vote such shares that is questioned.

I am advised that the said Brooke as such agent is the trustee of an active trust and is entitled as such to exercise and perform the express provision of such contracts that as such agent he shall possess "all voting rights upon and with respect" to the shares embraced in such contracts.

In Conclusion

It is my earnest and sincere belief that the proposed change in the bonus by-law and the proposed reduction of the minimum price in the resolutions authorizing sale of common stock to employees are both things that should be done in the best interest of the stockholders of said defendant; that the

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stockholders are entitled to cast their vote upon and with respect to the same in response to the notice of such annual meeting; and that if allowed to vote the large majority of said stockholders will vote in favor thereof.

I have been gratified by the support given by the stockholders of said defendant, which, as shown by the election of directors, has been large and quite general, the opposition coming mostly from those residing in Richmond, Virginia.

Said defendant is the smallest of the four large tobacco companies. It is endeavoring to build up a brand of cigarettes known as "Old Gold". The future of said defendant rests largely on this effort. It is meeting with tremendous competition. To carry this work on needs the very best organization that can be secured and one that feels it is appreciated by the stockholders whom they serve. For a good many years the organization has received no bonus and has been unable to buy any shares of stock from said defendant under the stock resolutions bcause the price exceeded the market price of said shares. This is in striking contrast to the competitors of said defendant whose organizations have not only received large cash bonus but the organization of the very largest of them has been allowed to buy shares of the common stock thereof at a price less than one-fourth of the market price at which said shares were selling at the time. It is hardly possible, from an organization standpoint, to successfully compete in view of such conditions unless there be voted such benefits to the organization as those contained in the proposed change in the bonus by-law and the proposed reduction in the

minimum price for the sale of stock to the employees of said defendant.

Attached hereto as parts hereof, marked "Exhibits 7, 8 and 9", are a photostatic copy of a letter from Mr. Buford Scott to me, dated March 19, 1931, and of the proposed letter from Scott & Stringfellow to the stockholders of the defendant company and of the accompanying statement of assets enclosed in said letter, and a copy of my reply to Mr. Buford Scott dated March 20, 1931.

BENJAMIN L. BELT.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 20th day of March, 1931, as witness my notarial seal.

E. R. DANIELSEN
Notary Public, Westchester County
N. Y. Co. Clks. No. 687, Reg. No. 1D61A
Bronx Co. Clks. No. 52, Reg. No. 3147A
Commission Expires March 30, 1931

[NOTARIAL SEAL]

EXHIBIT 1, WITH AFFIDAVIT OF BENJAMIN L. BELT

ARTICLE II.

Meetings of Stockholders.

Section 1. The annual meeting of the Stockholders of the Corporation for the election of Directors, and such other business as may properly come before the meeting, shall be held at the principal office of the Company in New Jersey, on the second Tuesday of March, at eleven o'clock in the forenoon, or at any other hour as the Directors shall appoint before notice of the meeting is given.

Section 2. Special meetings of the Stockholders, to be held at the principal office of the Company in New Jersey may be called by the Directors for such purposes as shall be specified by resolution.

Section 3. Due notice of each annual meeting of the Stockholders shall be given by a written or printed notice signed by the Secretary of the Company and mailed, postage prepaid, at least twenty days prior to each meeting, to each Stockholder of record appearing on the books of the Company at the address given thereon, and public notice of the time and place of holding such meeting shall be published not less than once a week for two successive weeks previous thereto in a daily newspaper of general circulation, published in the City of New York.

Due notice of each special meeting shall be given also in the manner above provided. The notice shall state the object of the special meeting, and

no other business shall be transacted at such meeting; but this provision shall not apply to annual meetings, at which any business may be transacted without notice of the object of such annual meeting.

Section 4. The President of the Corporation, if present, shall call to order, and preside at all meetings of the Stockholders, whether general or special, and the Secretary of the Corporation (or in his absence an Assistant Secretary) shall be the Secretary of such meeting; if the President is absent, any Vice-President (according to his official seniority) shall preside. If the President and all the Vice-Presidents are absent, the meeting shall be presided over by the person designated in writing by the President, or any one of the Vice-Presidents —the designation of the officer superior in official position controlling. If the President and all the Vice-Presidents are absent, and no one designated by the President or any of the Vice-Presidents is present, the meeting may call any Stockholder of record who is entitled to vote for directors to preside. In the absence of the Secretary and Assistant Secretaries, any person may be selected by the meeting to act as Secretary of the meeting.

Section 5. The Board of Directors shall have power to close the Transfer Books of the Corporation for a period not exceeding thirty (30) days preceding the date of any meeting of stockholders, or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange shall go into effect, provided that in lieu of closing the Stock Transfer Books as aforesaid the Board of Directors

may fix in advance a date not exceeding thirty (30) days preceding the date of any meeting of stockholders, or the date for the payment of any dividends, or the date for the allotment of rights, or the date when any change or conversion or exchange of Capital Stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of and to vote at any such meeting or entitled to receive payment of any such dividend or any such allotment of rights or to exercise the rights in respect of any such change, conversion or exchange of Capital Stock, and in such case only stockholders of record on the date so fixed shall be entitled to such notice of and vote at such meeting or to receive payment of such dividend or to allotment of rights or exercise of such rights, as the case may be and notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid. Subject to the foregoing, at all meetings of the stockholders, each holder of the preferred or common stock shall be entitled to cast one vote for each share of such stock.

Section 6. Any voting proxy given by a Stockholder must be in writing, signed by the Stockholder.

Section 7. Less than a quorum of the Stockholders may adjourn any Stockholders' meeting.

Section 8. The Directors may appoint two Inspectors of the annual election at any time before notice of the meeting at which such election is held.

EXHIBIT 2-a, WITH AFFIDAVIT OF BENJAMIN L. BELT

P. LORILLARD COMPANY

JERSEY CITY, N. J.

February 14, 1931.

To the Stockholders of P. Lorillard Company:

Notice is hereby given that the Annual Meeting of the Stockholders of P. LORILLARD COMPANY, a New Jersey corporation, will be held at the principal office of the Company, Room 803, 15 Exchange Place, Jersey City, N. J., on March 10, 1931, at 11:00 o'clock in the forenoon, for the election of Directors; for the amendment of the existing Bonus By-Law of the Company, draft of which proposed amendment is enclosed; for the revision of Resolutions heretofore adopted by the Stockholders providing for the sale of Common Stock of the Company to its employees, draft of which proposed revision is enclosed and for the transaction of such other business as may properly come before the meeting.

H. LAURENCE BROOKE,

Secretary.

If unable to be present in person, do not fail to sign and return the annexed proxy, as soon as possible, so that the meeting may be properly held.

Exhibit 2-a, with Affidavit of Benjamin L. Belt

PROXY

Know all Men by these Presents, That, the undersigned, hereby constitutes, appoints and directs BENJAMIN L. BELT, WILLIAM R. PERKINS, and H. LAURENCE BROOKE, or any of them, in the name, place and stead of the undersigned, to attend as the attorneys and agents of and for the undersigned at a meeting of the Stockholders of P. LORILLARD COMPANY, a New Jersey Corporation, to be held on the 10th day of March, 1931, at 11:00 o'clock in the forenoon, at the office of the Company, Room 803, 15 Exchange Place, Jersey City, N. J., as well as at any and all adjournment or adjournments of such meeting, and to vote as the proxy of the undersigned thereat upon and with respect to the election of Directors, the amendment of the existing Bonus By-Law of the Company, the revision of the Resolutions heretofore adopted by the Stockholders providing for the sale of Common Stock of the Company to its employees and the transaction of such other business as may properly come before said meeting or any adjournment thereof, according to the number of votes the undersigned would be entitled to cast if then personally present, and to do all such acts and things as may be necessary or proper in order to carry out the Resolutions adopted and the actions taken by said meeting or any adjournment thereof, hereby giving to said attorneys and agents, or any of them, power to substitute another or others in their or his stead and ratifying and confirming all that the attorneys and agents of the undersigned, or any of them,

or any substitute or substitutes for any of them, may do by virtue hereof. This proxy shall be deemed dated on the date set for the meeting herein mentioned, unless a different date is inserted below.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this .... day of ....., 1931.

.....[SEAL]

EXHIBIT 2-b, WITH AFFIDAVIT OF BENJAMIN L. BELT.

PROPOSED REVISION OF BONUS BY-LAW

RESOLVED: That Article XII of the By-Laws entitled "Bonus to Officers and Employees" be amended so as to read as follows:

"Section 1. As soon as reasonably may be after the end of the calendar year 1931, and of each calendar year of the Company's existence thereafter, and under and in accordance with all the terms of this Article, the Treasurer of the Company shall ascertain the net profits of the Company for such year, and shall pay and distribute an amount of such net profits equal in the aggregate to five per cent. (5%) thereof to and among those officers and employees of the Company who have both been in the employ and owned Common Stock of the Company as hereinafter stated as an extra dividend upon and in the proportion among such officers and employees of such shares of Common Stock thus owned by them respectively.

"Section 2. For the purpose of this Article of the By-Laws, the net profits of the Company for any year shall consist of the income and earnings of the Company in the operation and conduct of its businesses and affairs for such year after deducting therefrom all the taxes, costs, expenses and losses, such provisions as may be determined by the Board of Directors of the Company for depreciation and outstanding trade obligations and otherwise, and an additional amount equal in the aggregate to the 7% interest on its outstanding

7% Bonds, the 5% interest on its outstanding 5% Bonds, the 5½% interest on its outstanding 5½% Bonds and the 7% dividends on its issued 7% Preferred Stock, to which profits shall be added or from which profits shall be deducted, as the case may be, the Company's proportion (based on its stock holdings) of the net profits or losses for such year of its subsidiary Companies.

"Section 3. Wherever used in this Article the word 'owned' shall mean and be satisfied only by the entire registered, legal and beneficial ownership, but the mere pledging of shares as collateral security shall not be deemed to impair such ownership if otherwise existing, and Common Stock sold by the Company to any officer or employee shall be deemed so owned by such officer or employee so long as such officer or employee continues under contract to purchase the same from the Company notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee. To constitute a basis of participation for any year, the employment by the Company must exist for the whole of such year, except that should any officer or employee fail, for any reason, to be in the service of the Company for the whole of any year, such officer or employee, or the estate thereof, as the case may be, shall nevertheless participate in such payment and distribution for such year in the proportion that the duration of the employment of such officer or employee within such year bears to the whole of such year. To constitute a basis of participation with respect to any year, shares of said Common Stock

must be owned by an officer or employee for the whole duration of the employment of the officer or employee by the Company within such year, except that should an officer or employee of the Company purchase shares of said Common Stock during such year from an officer or employee of the Company or from the estate of such an officer or employee, such shares shall constitute a basis for participation by such purchaser in such payment and distribution for such year in the proportion that the period during which such shares are owned by the purchaser within such year bears to the whole of such year, if, disregarding the limitation hereinafter contained as to the number of shares upon and with respect to which an officer or employee may participate, such shares might otherwise have entitled the officer or employee who, or whose estate, is selling the same to participate upon and with respect thereto in such payment and distribution for such year. The president may not participate in any such payment and distribution upon or with respect to any shares of said Common Stock in excess of 7½% of the average issued Common Stock of the Company for such year, no vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 5% of the average issued Common Stock of the Company for such year, no secretary, treasurer, auditor, manager, superintendent, head of a department (such as leaf, law, sales, manufacture, traffic and the like), assistant to any of the foregoing, or assistant or secretary to the president or to any vice-president may participate in any such payment and distribution

upon or with respect to shares of said Common Stock in excess of 2½% of the average issued Common Stock of the Company for such year, and no other officer or employee of the Company may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 1% of the average issued Common Stock of the Company for such year; but the Board of Directors of the Company may at any time by resolution in writing add to said '2½%' Class any officer or employee or group or class of officers or employees then in said '1%' Class. Anything in this Article to the contrary notwithstanding, any shares of said Common Stock acquired by an officer or employee from the Company at any time in 1931 shall be deemed to have been owned by such officer or employee for all the purposes of this Article for the whole of the calendar year 1931 notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee.

"Section 4. The acts and findings of the Treasurer in ascertaining the net profits for any such year and making payment and distribution of the 5% thereof shall be binding and conclusive on all parties, and no one claiming hereunder shall have a right to question the said acts and findings or to any examination of the books, papers or accounts of the Company, or to continue with the Company or any claim against the Company or against any officer, director or employee of the Company or any right or claim whatever except as herein specifically expressed. But nothing herein contained shall be

construed to preclude the Company from correcting an error or preventing or undoing a fraud.

"Section 5. This Article of the By-Laws may be amended or repealed only by the action of the Stockholders of the Company and not by the Directors.

PROPOSED REVISION OF AUTHORITY TO SELL STOCK

RESOLVED: That the resolution passed March 10, 1925, authorizing the Board of Directors to sell to employees not exceeding 100,000 shares of Common Stock at not less than $30. per share and the resolution passed September 7, 1929, authorizing the Board of Directors to sell to employees not exceeding an additional 150,000 shares of Common Stock at not less than $20. per share, are hereby amended and consolidated so that in lieu of said resolutions the Board of Directors shall be and it is hereby authorized to issue and sell at not less than $10. per share not exceeding 250,000 shares of the Common Stock of this Company, without nominal or par value, to such officers and employees of the Company, at such times, on such terms and in such manner and amounts as may be determined by said Board at any time and from time to time;

RESOLVED FURTHER: That any contracts now existing for the sale to employees of Common Stock under said resolution of March 10, 1925, may be by said Board cancelled or altered in conformity with the above amendment of said resolution, as said Board may determine.

EXHIBIT 2-c, WITH AFFIDAVIT OF BENJAMIN L. BELT

P. LORILLARD COMPANY

119 WEST FORTIETH STREET

NEW YORK

OFFICE OF THE PRESIDENT.

February 14, 1931.

To the Stockholders
of P. Lorillard Company.

You will observe from the enclosed statement of the Company that its net profits for 1930 applicable to Common Stock were $2,822,831.02 equivalent to $1.47 per share on the Common Stock as compared with $545,123.86 net profits or twenty-eight cents per common share for 1929. This gratifying increase, notwithstanding the general business depression, is due in large measure to the healthy growth of OLD GOLD which has continued.

There is being mailed to you herewith a notice of the annual meeting of stockholders from which you will see that, in addition to the election of directors, there will be considered a revision of the bonus by-law and of the resolutions hereto passed authorizing the sale of Common Stock to employees..

A copy of the proposed revision of the bonus by-law accompanies the notice; and a copy of the present bonus by-law will be sent any stockholder on application so that comparison may be made if

desired. The essential change consists in making the amount to be distributed 5% of the net profits applicable to dividends on the Common Stock instead of 15% of the net profits remaining after deducting 7% on the average amount represented by Common Stock and surplus. For the past several years the terms of this by-law have precluded any bonus distribution and this has proven quite a handicap in view of the bonus being paid by other companies. In this situation a division of such profits for bonus purposes on a 5 to 95 basis between employees and common stockholders is suggested as neither unfair nor excessive.

The stockholders authorized on March 10, 1925, the sale to employees of 100,000 shares of Common Stock at not less than $30 per share and on September 7, 1929, the sale to employees of an additional 150,000 shares at not less than $20 per share. But unfortunately, though these minimum prices were less at the time than market value, conditions so changed that none of the 150,000 has been sold and, while contracts for the sale of some of the 100,000 shares were made, these contracts are proving burdensome instead of beneficial as they necessarily prevent a disposition by the purchaser for a period of years in order to retain the interest of the purchaser through stock ownership. What is now suggested is the revision (see copy enclosed) of these authorizations, and the contracts made under them, to a price more consonant with market conditions, say not less than $10 per share. Such action is recommended as in keeping with what other companies are doing and necessary to give proper effect to the desire of the stockholders, al-

ready expressed, to interest employees in the Company through stock ownership.

Since the annual meeting will be important it is hoped that a full expression may be obtained from the stockholders. For this reason, if you cannot be present in person, please do not fail to execute and return the proxy which accompanies the notice, using the stamped addressed envelope enclosed for that purpose.

Respectfully,

B. L. BELT
President.

EXHIBIT 3, WITH AFFIDAVIT OF BENJAMIN L. BELT

CERTIFICATE OF INCORPORATION

OF

P. LORILLARD COMPANY

THIS IS TO CERTIFY that the undersigned, Forrest E. Griswold, George T. Minnegerode and Morton E. Finch do hereby associate themselves into a Corporation under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)" and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names.

First—The name of the Corporation is P. Lorillard Company.

Second—The location of the principal office in this State is at 15 Exchange Place in the City of Jersey City, county of Hudson. The name of the statutory agent therein and in charge thereof upon whom process against this Corporation may be served is The Corporation Trust Company, 15 Exchange Place, Jersey City, N. J.

Third—The objects for which this Corporation is formed are to dry and cure leaf tobacco and to buy, manufacture, sell, and otherwise deal in tobacco and the products of tobacco in any and all forms; to construct or otherwise acquire and hold, own, maintain and operate warehouses, factories, offices and other buildings, structures

and appliances for the raising, drying, curing, storing, manufacturing, selling and distributing of tobacco and its products in any and all forms. The Corporation shall have power to conduct its business in all its branches, have one or more offices and unlimitedly acquire, hold, mortgage and convey real and personal property in the State of New Jersey and as well in all other States, territories, possessions and dependencies of the United States and in all foreign countries.

Fourth—The total authorized Capital Stock of this Corporation is 5,113,076 shares of which 113,076 shares are Preferred Stock of the par value of $100 per share of the aggregate par value of $11,307,600 and 5,000,000 shares are Common Stock without nominal or par value. The Preferred Stock shall entitle the holders thereof to full voting rights and to receive out of the surplus or out of the net profits of the Corporation, and the Corporation shall be bound to pay thereon as and when declared by the Board of Directors, a dividend at the rate of, but never exceeding, seven per centum (7%) per annum, which dividend shall be cumulative from and after the first day of January, 1912, and payable yearly, half yearly or quarterly before any dividend shall be set apart or paid on the Common Stock. When all accrued dividends on the Preferred Stock have been paid the Directors may, if in their judgment the surplus or the net profits shall be sufficient for such purpose after deducting the amount of dividends to accrue on the Preferred Stock during the current year, declare and pay a dividend or dividends on the Common Stock. In the event of any liquidation or

dissolution or distribution of the assets of the Corporation (whether voluntary or involuntary) the holders of the Preferred Stock shall be entitled to be paid the par amount of their Preferred Shares and the amount of dividends accumulated and unpaid thereon before any amount shall be payable or paid to the holders of the Common Stock; and after the payment to the holders of the Preferred Stock of its par value and the dividends accumulated and unpaid thereon, the residue of the assets of the Corporation shall be ratably divided among and paid to the holders of its Common Stock.

The authorized shares of this Corporation without nominal or par value may be issued and sold from time to time for such consideration and upon such terms and conditions as from time to time may be fixed by the Board of Directors. Any and all shares without nominal or par value issued as permitted herein shall be deemed full paid and non-assessable, and the holder of such shares shall not be liable to the Corporation or its creditors in respect thereof. Every share of stock without nominal or par value shall be equal to every other share of such stock of the same class and shall rank, as respects any other class or classes of stock, according to the preferences given each and every class of stock hereby or by law. Every certificate for shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and shall state briefly the rights and preferences, if any, given to such shares, and no such certificate shall express any nominal or par value of such shares.

Exhibit 3, with Affidavit of Benjamin L. Belt

The certificates for each class of stock issued by this Corporation when signed by a Transfer Agent or an Assictant Transfer Agent and a Registrar may bear thereon the facsimile signatures of the proper officers of the Corporation instead of being actually signed by them.

The amount of Capital Stock with which the Corporation will commence business is One Thousand Dollars ($1,000).

Fifth—The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which the Company will commence business, all of common stock, are as follows:

Name	Post Office Address	No. of Shares
Forrest E. Griswold	Cor. Newark Ave. & Senate Place, Jersey City, N. J.	4
George T. Minnegerode	Cor. Newark Ave. & Senate Place, Jersey City, N. J.	3
Morton E. Finch	Cor. Newark Ave. & Senate Place, Jersey City, N. J.	3

Sixth—In furtherance of the powers conferred by general law the Company shall have power to guarantee dividends on any shares of the capital stock of any corporation in which it has an interest as stockholder and to endorse or otherwise guarantee the principal and interest, or either, of any

bonds, securities or other evidence of indebtedness created by any corporation in which the Corporation has such an interest, provided that authority for any such indorsement or guaranty be first given by resolution adopted by vote of at least two-thirds of the whole Board of Directors of the Corporation; to carry on any business operations deemed by the Corporation to be necessary or advisable in connection with any of the objects of its incorporation or in furtherance of any thereof, or tending to increase the value of its property or stock; but nothing herein set forth is to be construed to authorize the formation hereby of an insurance, safe deposit or trust company, banking corporation or savings bank or corporation deemed to possess any of the powers prohibited to corporations formed under the statutory provisions aforesaid; the said Corporation shall have power to purchase or otherwise acquire and hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of or of any bonds, securities or other evidences of indebtedness created by any other corporation or corporations of this or any other State or government, and to issue its own obligations in payment or exchange therefor, or for any purpose of its incorporation, and to secure such obligations to pledge or mortgage under deed of trust or otherwise of the shares of capital stock or bonds, securities or other evidences of indebtedness so acquired, or of any property of the Corporation. The power to make and alter By-Laws of the Corporation is conferred upon the Directors. The Directors of the Corporation may hold their meetings and have an office and keep the books of

the Corporation (except the stock and transfer books) in the City of New York or elsewhere outside of the State of New Jersey. The Directors of the Corporation shall have the power to fix and determine from time to time and to vary the sum to be reserved, over and above its capital stock paid in as a working capital, before declaring any dividends among its stockholders, and to fix the time of declaring and paying any dividend, and the amount of any dividend shall be determined by the Directors, unless otherwise provided by the By-Laws of the Corporation; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in. All sums so reserved may be applied from time to time to the acquisition of property as the Directors shall from time to time determine, and neither the property so acquired, nor any of its capital stock held by the Corporation shall be regarded as surplus or as net profits, for the purpose of declaration or payment of dividends, unless otherwise determined by the Directors. In case of any increase in the number of Directors of the Corporation, pursuant to its By-Laws, which may provide for such increase by vote of the Directors, vacancies in the Board shall be deemed to be thereby created which the existing Directors shall have power to fill until the next election by Stockholders, or until successors shall be otherwise chosen. The By-Laws of the Corporation may prescribe the number necessary to constitute a quorum of the Directors, which may be less than a majority of the Directors.

Seventh—The duration of the Company shall be perpetual.

EXHIBIT 4, WITH AFFIDAVIT OF BENJAMIN L. BELT

AMERICAN INTERNATIONAL CORPORATION

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

The annual meeting of stockholders of American International Corporation will be held at the office of the corporation, No. 120 Broadway, Borough of Manhattan, City of New York, N. Y., on April 1, 1931, at 10:00 o'clock in the forenoon, for the election of directors and for the consideration of such business of the past year and such other business as may come before the meeting.

To assure a quorum for the transaction of business, you are requested to sign the enclosed proxy and to return it promptly, whether or not you now expect to be present. Should you attend, the proxy will be handed back to you at the meeting.

The transfer books will not close.

New York City, March 12, 1931.

DONALD G. MILLAR,
Secretary.

PROXY

AMERICAN INTERNATIONAL CORPORATION

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, a stockholder of American International Corporation, a New York corporation, does hereby constitute and appoint Frank Altschul, Harry A. Arthur, Frederic W. Scott, Albert H. Wiggin and

Exhibit 4, with Affidavit of Benjamin L. Belt

Beekman Winthrop, or any one or more of them, the true and lawful attorneys for and in the name of the undersigned to vote as proxies for the undersigned the stock standing in the name of the undersigned, at the annual meeting of stockholders of said corporation, to be held at the office of the corporation, No. 120 Broadway, Borough of Manhattan, New York City, N. Y., on April 1, 1931, at 10:00 o'clock in the forenoon, and at any and all adjournments thereof, hereby granting to said attorney or attorneys full power and authority to act for and in the name of the undersigned at said meeting or meetings, in voting for directors of said corporation or otherwise and in the transaction of such other business as may come before the meeting.

The undersigned hereby grants to said attorneys, or any one or more of them, full power of substitution and revocation, hereby ratifying and confirming all that said attorneys or substitutes, or any one or more of them, may lawfully do in the premises, and revoking all proxies heretofore given by the undersigned.

WITNESS, the hand and seal of the undersigned this day of , 1931.

..... [L. S.]

Witness:

.....

N. B.—The foregoing proxy is to be signed, witnessed and forwarded promptly in the accompanying envelope to American International Corporation, 120 Broadway, New York City.

EXHIBIT 5, WITH AFFIDAVIT OF BENJAMIN L. BELT.

PRESENT BONUS BY-LAW

Secion 1. As soon as reasonably may be after the end of the calendar year 1921, and of each calendar year of the company's existence thereafter, and under and in accordance with all the terms of this article, the Treasurer of the Company shall ascertain the net profits of the Company for such year, and shall pay and distribute an amount of such net profits equal in the aggregate to fifteen per cent. (15%) thereof to and among those officers and employees of the company who have both been in the employ and owned Commón Stock of the Company for the whole of such year as an extra dividend upon and in the proportion among such officers and employees of such shares of Common Stock thus owned by them respectively.

Section 2. For the purpose of this article of the By-Laws, the net profits of the Company for any year shall consist of the income and earnings of the Company in the operation and conduct of its businesses and affairs for such year after deducting therefrom all the taxes, costs, expenses and losses, such provisions as may be determined by the Board of Directors of the Company for depreciation and outstanding trade obligations and otherwise, and an additional amount equal in the aggregate to the 7% interest on its outstanding 7% Bonds, the 5% interest on its outstanding 5% Bonds, the 5½% interest on its outstanding 5½% Bonds, the 7% dividends on its issued 7% Preferred Stock, $1.50

per share on its average issued Common Stock without nominal or par value, and 7% on its average surplus and undivided profits for such year, to which profits shall be added or from which profits shall be deducted, as the case may be, the Company's proportion (based on its stock holdings) of the net profits or losses for such year of its subsidiary Companies.

Section 3. Wherever used in this Article the word "owned" shall mean and be satisfied only by the entire registered, legal and beneficial ownership, but the mere pledging of shares as collateral security shall not be deemed to impair such ownership if otherwise existing, and Common Stock sold by the Company to any officer or employee shall be deemed so owned by such officer or employee so long as such officer or employee continues under contract to purchase the same from the Company notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee. To constitute a basis of participation for any year, the employment by the Company must exist for the whole of such year, except that should any officer or employee fail, for any reason, to be in the service of the Company for the whole of any year, such officer or employee, or the estate thereof, as the case may be, shall nevertheless participate in such payment and distribution for such year in the proportion that the duration of the employment of such officer or employee within such year bears to the whole of such year. To constitute a basis of participation with respect to any year, shares of said Common Stock must be owned by an officer or employee for the whole duration of the employment

of the officer or employee by the Company within such year, except that should an officer or employee of the Company purchase shares of said Common Stock during such year from an officer or employee of the Company or from the estate of such an officer or employee, such shares shall constitute a basis for participation by such purchaser in such payment and distribution for such year in the proportion that the period during which such shares are owned by the purchaser within such year bears to the whole of such year, if, disregarding the limitation hereinafter contained as to the number of shares upon and with respect to which an officer or employee may participate, such shares might otherwise have entitled the officer or employee who, or whose estate, is selling the same to participate upon and with respect thereto in such payment and distribution for such year. The president may not participate in any such payment and distribution upon or with respect to any shares of said Common Stock in excess of 3⅓% of the average issued Common Stock of the Company for such year, no vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 2% of the average issued Common Stock of the Company for such year, no secretary, treasurer, auditor, manager, superintendent, head of a department (such as leaf, law, sales, manufacture, traffic and the like) assistant to any of the foregoing, or assistant or secretary to the president or to any vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 1% of the average issued Common Stock of the Company for such year, and no other officer

or employee of the Company may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of ½ of 1% of the average issued Common Stock of the Company for such year; but the Board of Directors of the Company may at any time by resolution in writing add to said "1%" Class any officer or employee or group or class of officers or employees then in said "½ of 1%" Class. Anything in this Article to the contrary notwithstanding, any shares of said Common Stock so owned during the whole of the last six months of the calendar year 1921 shall be deemed to have been so owned for all the purposes of this article for the whole of the calendar year 1921.

Section 4. The acts and findings of the Treasurer in ascertaining the net profits for any such year and making payment and distribution of the 15% thereof shall be binding and conclusive on all parties, and no one claiming hereunder shall have a right to question the said acts and findings or to any examination of the books, papers or accounts of the Company, or to continue with the Company or any claim against the Company or against any officer, director or employee of the Company or any right or claim whatever except as herein specifically expressed. But nothing herein contained shall be construed to preclude the Company from correcting an error or preventing or undoing a fraud.

Section 5. This Article of the By-Laws may be amended or repealed only by the action of the stockholders of the Company and not by the Directors.

EXHIBIT 6, WITH AFFIDAVIT OF BENJAMIN L. BELT

THIS CONTRACT made this day of 192 by and between P. LORILLARD COMPANY, a New Jersey corporation, with offices at 119 West 40th Street, New York City (hereinafter called the Company) and of with the Company as thereof (hereinafter called the Buyer),

WITNESSETH:

That pursuant to the resolution of the stockholders of the Company adopted at their meeting held on March 10th, 1925, with respect to selling shares of the common stock of the Company to officers and employees thereof and by the authority and approval of the Board of Directors of the Company duly given, the Company sells to the Buyer and the Buyer purchases from the Company shares of the Common Stock of the Company of the par value of $25. per share upon the following terms which both parties accept and agree to perform, namely:

(1) The price is Thirty Dollars ($30.) per share, with interest thereon from the date hereof at five per cent per annum until paid. And the Buyer will pay this price to the Company at its said offices in quarterly installments of One Dollar ($1.) per share, together with the accrued interest to the date of each such payment upon the unpaid portion of the purchase price. The first of such payments shall be made on the first day of April, 1926.

(2) Said shares have been issued for the purposes of this contract in the name of G. T. Minni-

gerode, Agent, and his successors as Agent, where they shall remain until delivered in accordance with the terms hereof, said Minnegerode and his successors possessing all voting rights upon and with respect thereto and the right to pledge the same as collateral security for the borrowing of money to finance this sale, but only on such terms as that the said shares and the certificates therefor shall be forthcoming and deliverable under the terms of this contract. If for any reason said Minnigerode or any successor of said Minnigerode shall cease to be such Agent, his successor shall be the person chosen for that purpose by the Board of Directors of the Company and said Board shall have power to remove any such Agent at any time with or without cause. The Buyer from the date hereof shall be deemed the owner of said shares in the sense and for the purpose of any bonus by-law or resolutions of the Company now or hereafter passed.

(3) All distributions in money, rights or property (whether by way of dividend or otherwise) shall be made and stock dividends on the shares shall be issued, to such Agent, who shall dispose of any stock, property and rights so received to the best advantage, and the proceeds thereof as well as all cash so received shall be applied by him on said installments; provided that upon the payment of any stock dividend the Agent shall promptly notify the Buyer thereof, and thereupon the Buyer upon his payment to the Company at its said offices, within thirty days after the payment of such stock dividend, of the par value of such stock dividend upon said shares shall be entitled to have such

stock dividend issued and delivered to the Buyer, in lieu of any disposition thereof by said Agent; and said Agent shall apply such payment by the Buyer as a credit on the amount due by the Buyer hereunder.

(4) Should said Buyer become and be in arrears in said payments as much as two of said installments or cease for any cause, except death, to be connected with the Company, before said shares are delivered hereunder, then at the option of the Company exercised by notice to the Buyer given at any time thereafter, all interest of the Buyer and of any person claiming through such Buyer in and to said shares, payments and credits and under this contract shall cease. And the Company shall pay to said Buyer within thirty days after giving such notice all amounts paid and credited on said price hereunder, with interest on each such payment and credit at five per cent per annum from the making thereof until such payment, less interest at five per cent per annum upon the whole amount of said price from the date of this contract to the date of such payment; and such payment shall be full and final performance of this contract, and this contract shall thereupon terminate; provided, that the Buyer may continue this contract, preserving all rights under same, by paying to the Company within fifteen days after the giving of such notice all such arrears and accrued and unpaid interest, if the Buyer be then connected with the Company.

(5) Should said Buyer die before said shares are delivered hereunder, the Company as soon as it reasonably can thereafter, shall notify the Buyer's

personal representative of this contract, and the number of such shares held hereunder for such Buyer and the balance, both principal and interest, due thereon. Should such personal representative within ninety days after the giving of such notice pay said balance (with interest on the principal thereof down to such payment) to the Company and comply with all applicable transfer and estate and inheritance tax laws, said shares shall be issued and delivered to said personal representative. In default of such payment, or in case no such personal representative be appointed within one year after such death, the terms of paragraph (4) hereof shall apply and be followed as if the Buyer had ceased to be connected with the Company on the last day of said ninety day or one year period, as the fact may be, within the terms of said paragraph.

(6) Only upon said shares being fully paid for shall they be transferred and delivered to the Buyer. And no shares may be transferred and delivered hereunder prior to the expiration of five years from the date hereof notwithstanding payment in full therefor may have been sooner made, except in the event of the death of the Buyer as hereinbefore provided, and except further that the Buyer shall, upon full payment, be entitled to have transfer and delivery of said shares to him when the Buyer is or becomes forty-five or more years of age and more than three years have elapsed from the date of this contract.

(7) Anything herein contained to the contrary notwithstanding, the Buyer (if not a president or a vice-president or the general counsel of this Com-

pany) may cancel this contract by notice to the Company to that effect at any time during the year 1926, and thereupon this contract shall terminate as well as all interest of the Buyer in and under it. And there shall be paid by the Company to the Buyer in full settlement of the Buyer's rights hereunder any sums the Buyer may have paid to the Company hereunder (not including amounts credited from such distributions or on account of stock dividends) with interest thereon from the time of the payment thereof to the Company at the rate of five per cent per annum until so repaid to the Buyer.

(8) Any notice shall be deemed given when it is in writing and mailed, duly stamped and addressed. And this contract shall bind the heirs, personal representatives, successors and assigns of the parties to it.

WITNESS the following signatures and seals.

P. LORILLARD COMPANY,

By.....
Vice-President.

WITNESS:

.....

.....(SEAL)

.....

EXHIBIT 7, WITH AFFIDAVIT OF BENJAMIN L. BELT

SCOTT & STRINGFELLOW

BANKERS & BROKERS

Richmond, Va.

FREDERIC WM. SCOTT
BUFORD SCOTT
WALTER S. ROBERTSON
EDWARD C. ANDERSON

MEMBERS
NEW YORK STOCK EXCHANGE
NEW YORK CURB MARKET (ASSOCIATE)
RICHMOND STOCK EXCHANGE
CABLE ADDRESS: SCOTTS

March 19, 1931

Mr. B. L. Belt, President,
P. Lorillard Company,
119 West 40th Street,
New York, N. Y.

Dear Mr. Belt:

I am enclosing herein proof of a letter which we propose sending to stockholders of the Lorillard Company. We have been in disagreement before with companies in which we were largely interested, and have communicated by such a letter with other stockholders. In each case we have always forwarded the letter to the management, because we do not wish to make any statement in a letter which the management would consider improper or which could hurt the value of our securities.

If you would be good enough to read this letter and return it to me with any suggestion which

you might like to make I would very much appreciate it.

We are all glad to see the stock stronger.

Yours very truly,

BUFORD SCOTT.

BS-D
Encl.

P. S.: We purpose sending out the letter Monday, so if there is any blatant error please let me know right away.

EXHIBIT 8, WITH AFFIDAVIT OF BENJAMIN L. BELT

SCOTT & STRINGFELLOW

BANKERS & BROKERS

Richmond, Va.

FREDERIC WM. SCOTT
BUFORD SCOTT
WALTER S. ROBERTSON
EDWARD C. ANDERSON

MEMBERS
NEW YORK STOCK EXCHANGE
NEW YORK CURB MARKET (ASSOCIATE)
RICHMOND STOCK EXCHANGE
CABLE ADDRESS: SCOTTS

March 23, 1931.

To the Stockholders of the P. Lorillard Company:

By resolution of March 10, 1925, the stockholders of this company authorized the sale of 100,000 shares of common stock to officers and employees at $30 a share, which was more than the book value and less than the then market price. On September 7, 1929, the sale was authorized of an additional 150,000 shares to officers and employees at $20 a share, which was slightly in excess of the book value and below the then market price.

We understand that none of the 150,000 shares last mentioned was purchased; that of the 100,000 shares authorized to be sold in March, 1925, at $30 a share, officers and employees purchased approximately 74,000 shares. We are not advised as to the persons by whom these purchases were made, the terms thereof, or the amounts, if any, paid on account of such purchases.

In the notice of the annual meeting to be held on March 10, 1931, and in the letter of the President

accompanying that notice, you were informed that it was proposed to ask your approval at that meeting of a plan to cancel the authority to sell 100,000 shares of stock at $30 and any contracts of purchase which might have been made thereunder, and also to cancel the authority to sell 150,000 shares at $20 a share, and in lieu thereof to sell to officers and employees 250,000 shares at not less than $10 a share, which price is less than 50 per cent of the present book value of the stock and materially below the price at which it is now selling in the market.

The effect of the proposed plan, if approved, would be to cancel existing contracts under which there have been paid, or are due to the company, sums aggregating approximately $2,220,000 not including interest, and in addition thereto to sell to officers and employees 250,000 shares of the stock of the company at a price approximately $2,750,000 less than its present book value.

When notice of this plan was received we sought from the officers of the company, both by correspondence and personal conference, information as to the terms and status of existing contracts for the purchase of stock heretofore authorized to be sold and the amounts paid thereunder, as well as pertintent information with respect to the operation of the proposed plan. This information was at all times refused.

Being advised that it was the purpose of the management to put through the plan at the annual meeting regardless of the objection of independent

stockholders and without furnishing the necessary information to enable the stockholders to act intelligently thereon, we applied to a Vice Chancellor of New Jersey for an injunction to restrain the holding of the meeting and the approval of the plan. This injunction was granted. On March 9th counsel for the company moved to have the injunction vacated and the motion was denied except to the extent that the order was modified to permit the election of a board of directors at the annual meeting and the adjournment thereof to April 21, 1931.

The meeting was held on March 10, 1931, subject to the limitations of this order. Neither the President nor any of the five Vice-Presidents attended. The President designated the Secretary as the Chairman of the meeting and two employees were chosen to act as inspectors of election. A large number of independent stockholders attended, representing about 240,000 shares of stock.

No report was made of the company's condition or prospects. Inquiries by stockholders as to the affairs of the company were not answered. A bag was presented, said to contain proxies in favor of the Secretary and Chairman of the meeting, for about 1,250,000 shares, and all opportunity to check these proxies or to have their validity passed upon was denied. A casual inspection showed that many of them were improperly executed or otherwise defective, but all protests against the voting of such proxies were ignored. The existing board of directors, all of whom were officers and employees of the company, were re-elected by the votes cast by the management. The meeting was then adjourned

to be held at 15 Exchange Place, Jersey City, N. J., on April 21, 1931, at 11 o'clock A. M.

The P. Lorillard Company is in excellent financial condition. On December 31, 1930, it had a cash balance of nearly $17,000,000 and other current assets aggregating about $55,500,000; and owned real estate and machinery worth from $10,000,000 to $12,000,000. Its current liabilities were less than $1,500,000. For the year 1930, after paying interest on bonds, there was left for preferred and common stockholders about $3,600,000. During the past five years there has been created the "Old Gold" brand of cigarettes, the cost of which has been charged to current earnings and no part thereof has been capitalized. We are informed that this brand is now remunerative.

In these circumstances we favor liberal provision for the officers and employees of the company. We do not feel, however, that the proposed plan is just or equitable. It certainly should not be approved and the existing contracts cancelled without definite information as to the terms and present status of these contracts and as to the operation of the proposed plan and who are to be the beneficiaries thereof. This is especially true where all of the directors are officers and employees who would benefit by the proposed plan, and who refuse to give to the stockholders any information either at the meeting of the stockholders or otherwise.

If you concur in this view and cannot attend the adjourned annual meeting, we shall be pleased if you will sign and return to us the enclosed proxy to the end that your stock may be represented and

voted upon this matter, which we deem of vital interest to the company and its stockholders.

Very respectfully,

SCOTT & STRINGFELLOW.

HENRY W. ANDERSON,
Hunton, Williams, Anderson & Gay,
Richmond, Va.

JOHN H. BOCOCK,
McGuire, Riely & Eggleston,
Richmond, Va.

ROBERT H. MCCARTER,
McCarter & English,
Newark, N. J.

Counsel.

P. S. By further order of the court the meeting scheduled for April 21st will again adjourn, without taking any action, till May 5th at the same place and hour.

STATEMENT OF ASSETS OF THE
P. LORILLARD COMPANY

December 31, 1930, the P. Lorillard Company had on hand:

Cash amounting to.....	$16,980,000
Leaf Tobacco valued at.....	48,350,000
Other Current Assets of.....	7,200,000
Making Total Current Assets of.....	$72,530,000

Exhibit 8, with Affidavit of Benjamin L. Belt

	There was due by the Company for current accounts	$ 510,000	
	Accrued interest on bonds and dividends payable on the Preferred stock amounted to	960,000	
	Making Total Current Liabilities of		1,470,000
	Leaving Net Working Capital of		71,060,000
	The Company had real estate, machinery and fixtures carried on the books at	13,600,000	
	Less Reserves against these items and "advertising, taxes, etc.," of	3,240,000	$10,360,000
	Of this, one parcel worth probably $1,500,000 is not necessary for operations of the Company and should be sold and the proceeds added to working capital.		
	The Company had other assets carried at		3,920,000

representing principally investments in other companies, the value of which we are unable to determine, making the total assets.....	$85,340,000
The Company had outstanding bonds amounting to	33,680,000
Resulting in Net Assets for the stockholders of.....	$51,660,000
There were 113,076 shares of Preferred Stock (Par $100)	11,307,600
Leaving assets applicable to the Comon Stock of..	$40,352,400
Equivalent to $21.10 per share on the 1,909,000 shares of Common Stock outstanding.	

In addition to the above, the Company has valuable brands, trademarks and good will, created during a period of 171 years, in the development of which many millions of dollars have been spent in advertising and which the Company carries at $21,268,000, equivalent to $11.10 per share of common stock, making a total value for the common stock, including this item, of $32.20 per share.

The above figures are taken from the treasurer's statement which is not certified by an outside agency.

To illustrate the potential value of Lorillard brands, we give below the present value of brands of other large companies:

The brands and good will of the American Tobacco Company are selling in the open market (with the stock at $120 per share) for.....	$407,000,000
The brands and good will of the R. J. Reynolds Tobacco Company are selling (with the "B" stock at $50 per share) for	367,000,000
The brands and good will of the Liggett & Myers Tobacco Company are selling (with the stock at $90 per share) for	176,000,000
	$950,000,000

The present market price of 20 for Lorillard not only places no value whatever on the brands and good will of this Company, but the aggregate market price of the stock is $2,000,000 less than the value of the Company's tangible assets.

MARCH 19, 1931

EXHIBIT 9, WITH AFFIDAVIT OF BENJAMIN L. BELT

P. LORILLARD COMPANY

119 WEST 40th STREET

NEW YORK CITY

OFFICE OF THE PRESIDENT

March 20, 1931.

Mr. Buford Scott,
Messrs. Scott & Stringfellow,
Richmond, Virginia.

Dear Mr. Scott:

I have your letter of the 19th with its enclosures and thank you for your courtesy in submitting to me your proposed circular letter to the stockholders in advance of sending it out.

Your idea of circularizing the stockholders in advance of a hearing by the Court on the merits comes as a surprise.

It seems to me that inasmuch as you have seen fit to question by a suit in the Chancery Court of New Jersey the right of the stockholders to vote, you ought in fairness to await that decision before circularizing the stockholders. When our counsel asked for an adjournment of the hearing from March 16 to March 30, 1931, your counsel replied that he would grant the request only upon the express condition that the meeting of stockholders should be adjourned a like period in order that the

time allowed by the Court for circularizing the stockholders might not be shortened by the adjournment of the hearing; and accordingly the order of adjournment, which was entered by consent, did adjourn the meeting of stockholders from April 21 to May 5, 1931.

Your statement that "the injunction was granted", without more, is misleading. It gives the idea that the injunction for which you applied, namely, "to restrain the holding of the meeting and the approval of the plan", has been finally awarded which, if so, would make your circular to the stockholders unnecessary. It also gives the idea that the Court has passed upon the merits of your contention and decided it in your favor, which is not the fact. All that has happened is the entry of an order to show cause, returnable originally on March 16, 1931, and now by adjournment on March 30, 1931, with a temporary restraining order in the meanwhile. It would be unfair to give the stockholders any idea that what the Court has done was a passing by the Court on the merits of your contention.

The meeting on March 10, 1931, was held in the usual way. The companys' statement for 1930, which you commend, had already been given to the stockholders. The proxies were placed before your counsel in an open satchel, in bundles alphabetically arranged. Your counsel were told that they were thus placed so as to be available to their inspection. They so understood. The stock list and records of the company were likewise present and available to them. They had full opportunity

to check while the meeting was in session, which was from 11 A. M. to 5:45 P. M. The statements in your circular letter as to the meeting are quite misleading to the stockholders and unfair to those who conducted the meeting.

Quite inconsistent are your statements that all opportunity to check these proxies was denied and that "a casual inspection showed that many of them were improperly executed or otherwise defective". Such a statement is in flagrant disregard of the facts. These proxies came from over fifty-eight hundred stockholders, representing over a million and a quarter shares, whereas the votes for your nominee as director were only 219,082. It would require the elimination of many more than half of these proxies to come anywhere near justifying the statement you make. Surely you are not willing to make any such accusation against the stockholders to whom you are sending your letter. As a matter of fact, I am advised by counsel that the proxies were properly executed and not defective. If they are, you have a plain statutory remedy in the Supreme Court of New Jersey.

Your circular letter does not make any distinctive statements as to the proposed amendment of the bonus by-law. It says: "In these circumstances we favor liberal provision for the officers and employees of the company. We do not feel, however, that the proposed plan is just or equitable. It certainly should not be approved and the existing contracts cancelled without definite information", etc. Inasmuch as the proposed amendment of the bonus by-law is an important item of business and quite distinct from the revision of the resolutions

authorizing sales of stock to employees, as well as from the cancellation of contracts selling shares to employees, in all fairness you should make it plain to the stockholders just how you will vote any proxies they may send you as respects the proposed amendment of the bonus by-law. Would you vote for or against the proposed amendment of the bonus by-law the proxies that might be received by you in response to your circular letter? This is something that I cannot gather from your circular letter, and I do not think any other stockholder can.

Your circular letter, referring to the brand "OLD GOLD", states "we are informed that this brand is now remunerative". You do not give the source of your information. Your circular letter would make the stockholders believe your statement true as of its date. I can not, even by silence, sanction any such statement.

Your statements with respect to the cancellation of contracts are concerning a matter which you know will not come before the adjourned meeting of the stockholders. You and your counsel were present in the courtroom and heard the argument on the motion of this company to modify the *ex parte* order which had been entered; and you heard our counsel say that the cancellation of the contracts would not come before the adjourned meeting and that the Court might enter an injunction order to that effect if you and your co-complainants so desired. In view of this, the statements of your circular letter with respect to the cancellation of contracts are nothing less than a wanton attempt to prejudice the management with the stock-

holders and to secure proxies from stockholders by misrepresentations as to what will come before the adjourned meeting of stockholders.

Your calculations with respect to the sums involved in the proposed cancellation of contracts are incorrect. I have not given you information in this respect because of the unfriendly attitude which you have displayed in this matter in seeking to prevent the stockholders from voting on the matters stated in the notice of the annual meeting. This information was not made available at the meeting on March 10, 1931, because the Order of the Court allowed only the election of directors to occur at that meeting. Your letter is therefore misleading in its statement that such information should have been available at the meeting on March 10, 1931.

I am prevented from a careful consideration of the statement of assets which will accompany your circular letter to the stockholders by your statement that the circular letter will be mailed on Monday. I do notice the following things, however. You state that there is one parcel of land worth probably a million and a half dollars which is not necessary for the operation of the company and should be sold. In conjunction with this statement you should further state in order that the stockholders may not be misled that you gained this information from me and that at the same time I told you that we had been trying to get a purchaser for this property for three years, without success.

You also say: "The above figures are taken from the Treasurer's statement, which is not certified by

an outside agency". In order that you may not mislead the stockholders or insinuate unfairly against the company, you should further state that the company has never had any of its statements certified by an outside agency and that this is also true of the statements of its competitors, the American Tobacco Company, the Liggett & Myers Tobacco Company, the United States Company, the American Snuff Company, and perhaps others.

You also say that the present market price for Lorillard is $20. In fairness to the stockholders you should say what the market price was when the notice of the annual meeting was mailed, that the price of the stock had this year been below $9, and that for the first time this year the stock touched the price of $20 on the date of your letter to me. In view of this, I think also you would be lacking in fairness if you did not tell the stockholders in your circular letter to what extent you and those associated with you in this opposition directly or indirectly contributed to this recent advance in the price of the stock.

There is one thing further that I think in all fairness your circular letter should say. It should state that at the request of your counsel I met you and him in Washington, and again at the request of the senior member of your firm I met him at the Hotel Plaza in New York City, each time in an endeavor to compose the differences and prevent litigation. Each time I was met with the request, which neither your bill of complaint nor your circular letter disclosed, that there should be put on the board of directors of the company one or more representatives agreeable to you, pref-

erably from Richmond, Virginia; also that, in line with this, at the election of directors one of your counsel nominated as a director Mr. James H. Scott, Jr., who is closely identified with your firm and has had no experience in the conduct of a tobacco business. I think the stockholders should know just what are the motives actuating your opposition and the things you really desire to accomplish by it.

I hope you are correct in your forecast of the potential value of the Lorillard brands. I cannot join in your prognostication. You can not, by any statement that your circular letter has been submitted to me, quote me as even tacitly joining in what you prophesy. But can quote me as saying that there will be no possibility of any such desirable end being reached if the other stockholders manifest toward the organization the spirit that is being manifested by those who are behind the suit and the circular letter.

Yours very truly,

B. L. Belt,
President.

Affidavit of H. Laurence Brooke for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

H. LAURENCE BROOKE, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is H. Laurence Brooke. I reside in the City, County and State of New York, and am above the age of 21 years. I have been connected with P. Lorillard Company, the defendant corporation in the above cause, as Assistant Counsel since on or about May 1, 1925. I have been Secretary of defendant corporation since on or about July 1, 1927. I am still Secretary and Assistant Counsel of defendant corporation.

I was with Mr. Benjamin L. Belt, President of the defendant corporation, in Washington on March 2, 1931, when he saw Col. Henry W. Anderson and Mr. Buford Scott at the invitation of the former and I heard Mr. Scott propose to Mr. Belt that there should be elected to the Board of Directors of the defendant corporation one or more directors, preferably from Richmond, Virginia, and agreeable to them. Mr. Scott was quite insistent on this.

By designation of the President pursuant to the By-laws, I acted as Chairman at the annual meeting of the stockholders of defendant corporation, duly convened and held March 10, 1931, at Room 803, No. 15 Exchange Place, Jersey City, New Jersey, at 11:00 o'clock in the forenoon of said day.

Mr. L. E. Clemens was chosen Secretary of the meeting.

Neither the President nor any Vice-President nor any Director of said defendant corporation was present.

There was produced at said convening, and remained throughout said meeting, (1) the transfer books and stock books of defendant corporation required by statute to be kept by it at its said principal office in the State of New Jersey, to wit, No. 15 Exchange Place, Jersey City, and (2) a list showing, in alphabetical order, the names and addresses of the Preferred and Common stockholders of defendant corporation, with the number of shares held by each at 3:00 P. M. on February 9, 1931, duly certified by the transfer agent of defendant corporation. It was stated by me at said convening and known by the stockholders in attendance thereat that these books and list were there for the inspection, examination and use of such stockholders.

There was produced the notice of said meeting and affidavits showing that such notice had been duly mailed to the stockholders and published as required by the statutes and By-laws of defendant corporation in such case made and provided. These documents were directed to be attached to the minutes of the meeting as a part of the same.

There were present in person the following stockholders, including those subsequently added, as hereinafter mentioned, to the list of those so present:

H. Laurence Brooke	for	56	Common Shares
Joseph A. Dart	for	200	Common Shares
A. Victor Donnellan	for	100	Common Shares
W. J. Halley	for	25	Common Shares
E. C. Hunter	for	25	Common Shares
Henry W. Miller	for	53	Common Shares
Leo M. Sachs	for	140	Common Shares
Buford Scott	for	1,500	Common Shares
Frederick William Scott, of Scott & Strongfellow	.....		
James H. Scott, Jr.	for	1,000	Common Shares
Robert E. Scott	for	50	Common Shares
Scott & Stringfellow (represented by Buford Scott)	for	40,245	Common Shares
Ethel V. Jackson	for	5	Common Shares
H. Laurence Brooke, Agent	for	53,938	Common Shares
Total		97,337	Common Shares

Mr. Buford Scott, one of the complainants in said cause and a member of the firm of Scott & Stringfellow, stock brokers, of Richmond, Virginia, another of said complainants, produced and exercised at said meeting proxies running to Scott & Stringfellow from 84 stockholders for an aggregate of 126,466 shares of Preferred and Common Stock.

There were also present at said meeting the following (other than myself) by virtue of proxies in their favor:

R. H. Walker, with proxies from 6 Stockholders for an aggregate of	9,109	Shares

J. A. Dart, with proxies from 7 Stockholders for an aggregate of	16,525	Shares
Coleman Wortham, with proxies from 17 Stockholders for an aggregate of	33,303	Shares
Max Frieder, with a proxy from 1 Stockholder for	200	Shares
Peter B. Prentis, with a proxy from 1 Stockholder for	100	Shares
Warren W. Cunningham, with a proxy from 1 Stockholder for	11,343	Shares
George W. C. McCarter, with a proxy from 1 Stockholder for	300	Shares
Wickliffe Shreve, with a proxy from 1 Stockholder for	100	Shares
Leah M. Bailey, with a proxy from 1 Stockholder for	630	Shares
Henry W. Anderson, with a proxy from 1 Stockholder for	500	Shares
Richard E. Burdett, with a proxy from 1 Stockholder for	300	Shares
Charles Foster Brown, with a proxy from 1 Stockholder for	1,400	Shares
Todd Wool, with a proxy from 1 Stockholder for	10	Shares
Buford Scott, with a proxy from 1 Stockholder for	400	Shares
Leslie E. Clemons, with a proxy from 1 Stockholder for	25	Shares
John H. Bocock, with a proxy from 1 Stockholder for	1,500	Shares
Total	75,745	Shares

Upon the presentation of the proxies it was found that some brokerage concerns had given proxies to me and also to others present. All these proxies were examined and considered by Col. Anderson, Messrs. McCarter and Bocock, myself and the others interested and all agreed that the circumstances required these proxies to be voted, and they were voted during the meeting, in accordance with the tabulation thereof then made. All figures given herein reflect said agreement.

Col. Anderson stated that he, as well as Messrs. Bocock and McCarter, were prsent as proxy holders and as counsel for the complainants in the above entitled cause and the proxies held by them and requested an opportunity to examine all proxies before it should be declared that a quorum was present. I replied that I desired to extend every courtesy and facility for the inspection of proxies afforded by the limitation of time for holding the meeting.

I then produced proxies from 5,858 stockholders for an aggregate of 1,284,447 shares of Preferred and Common Stock out of a total of 9,009 stockholders and 1,998,780 shares of Preferred and Common Stock entitled to vote at such meeting. In ascertaining this total of shares I multiplied by 4 the 43 shares of $100 par value Common Stock still unexchanged (none of which was present at the meeting) and I deducted the 1,900 shares of Preferred Stock and the 2,870 shares of Common Stock owned by the defendant corporation and the 18,583 shares of Common Stock in my name as such Agent but not embraced in outstanding contracts.

When I produced these proxies I stated that they were available for such inspection as the time requirements of the meeting would permit, which were that the polls had to be opened before 5:00 o'clock P. M. and closed before 9:00 o'clock P. M. For this purpose the said proxies, in a satchel in bundles, alphabetically arranged, were placed on the table in front of Col. Anderson and Messrs. McCarter and Bocock.

Later observing that neither Col. Anderson nor Messrs. McCarter and Bocock were availing themselves of the opportunity to inspect said proxies running to me, I asked them if they understood that the said proxies were available for inspection by them and they stated that they did so understand. Thereafter, Col. Anderson and Messrs. McCarter and Bocock, Mr. Frederick William Scott and others proceeded to examine several bundles of the said proxies and continued to do so from time to time until the time when the proxies were delivered to the Inspectors of Election as hereinafter set forth.

Col. Anderson then asked me whether the persons sitting near me, who were then engaged in checking the proxies that had been produced, were employees of the Company. I informed him that they were and that their names and positions were as follows:

E. C. Hunter, Assistant Auditor;
W. J. Halley, Assistant to the Comptroller;
L. E. Clemens, Assistant Secretary and Treassurer;
Peter B. Prentis, of the Insurance Department.

Col. Anderson then asked Mr. Wool if he was present as counsel of the Company. Mr. Wool informed Col. Anderson that he was present as the holder of a proxy and was associated with Mr. William R. Perkins, General Counsel of the defendant corporation.

It was then called to my attention by Messrs. Hunter and Halley that they had found on the stock list of the former $25 par value Common Stock of the Company an entry giving Scott & Stringfellow 900 shares additional to those with which they had been credited theretofore by me. I informed Mr. Buford Scott of this fact and Scott & Stringfellow were allowed to include the said 900 additional shares in those voted by them. Like information with respect to 1,880 shares was given to me by the said Messrs. Hunter and Halley with respect to the proxy running to Mr. Coleman Wortham, from the stock brokerage house of Davenport & Company, of Richmond, Virginia. I advised Mr. Wortham of this fact and made like correction with respect to the proxies running to him from this brokerage concern.

At the request of Col. Anderson he was then allowed to make an address to the meeting on behalf of himself and his said clients in which he challenged the validity of each and every proxy running to Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, or their substitute, and protested against the voting thereof or of the counting of the stock so represented, even to the extent of determining whether a quorum was present. He referred to Section 8 of Article II of the By-laws of defendant corporation providing that: "The Directors

may appoint two Inspectors of the Annual Election at any time before notice of the meeting at which such election is held," and asked if such appointment had been made and upon being informed by me in the negative he contended that this provision was mandatory and as Inspectors are quasi-judicial officers they alone could receive and pass upon the validity of proxies for the purpose of a quorum, and that by reason of the failure of the Board of Directors to make such appointment the meeting was not properly organized and could not proceed. He contended that the meeting was not valid because his said clients had not had an opportunity to inspect all of the proxies running to Messrs. Belt, Perkins and Brooke, and because the same had been examined and counted only by the employees of the defendant corporation. He further contended that as Messrs. Belt, Perkins and Brooke were officers, directors or employees of the defendant corporation the proxies running to them were invalid by reason of their interest in the result of the election of Directors. In addition, he argued that said proxies were likewise invalid as no sufficient information had been given to the stockholders as to the contracts for the purchase by officers, directors or employees of stock of the defendant corporation under the stockholders' resolution of March 10, 1925. He asserted that without doubt many of such proxies were executed by fiduciaries and invalid because they were general in purpose and should have contained directions for their being voted in a specific manner so that the proxy holder in that event would be performing a ministerial duty only, and further that such proxies

should be accompanied by written evidence of the authority of the fiduciary to execute the same. For the foregoing reasons he claimed that no quorum was present, that the meeting was not properly constituted and that the proxies running to Messrs. Belt, Perkins and Brooke were void.

I overruled these objections and declared a quorum present, saying to Col. Anderson that it was apparent the number of stockholders requisite for a quorum was present, that when the report made by the Inspectors of Election upon the vote for Directors it would show in fact that a quorum was present, and if it showed to the contrary the meeting would then be abortive and have to adjourn. Thereupon I declared that it was in order to proceed with the election of Directors.

It has been the invariable custom of said defendant corporation to attach to each notice of a meeting of stockholders a form of proxy which named the President and other officers and employees of said defendant corporation as proxies therein and they have been freely executed and delivered by the stockholders and used in such meetings without question until in this cause. Such proxies have also been used when signed by fiduciaries. The foregoing is shown by the records and papers of said defendant corporation which are in my possession as its Secretary.

On motion made by Mr. Wool and seconded by Mr. Prentis, the said Messrs. E. C. Hunter and W. J. Halley were nominated as the two Inspectors of Election. On motion of Mr. Bocock, seconded by Mr. McCarter, Mr. James H. Scott, Jr., one of the complainants in this cause, was nominated as

an Inspector of Election. None of these nominees were Directors of the defendant corporation and neither said Hunter nor said Halley was a candidate for that office. Subsequently, as hereinafter shown, the said James H. Scott, Jr., was nominated for the office of Director.

Col. Anderson objected to Messrs. Hunter and Halley being Inspectors on the ground that as they were employees of the defendant corporation and would benefit by the Bonus By-law and the contract for the sale of stock to employees they were not eligible to the office of Inspectors of Election; and he renewed his protest against the voting of the proxies running to Messrs. Belt, Perkins and Brooke.

I overruled Col. Anderson's objections. From the minute books in my possession I have made and hereto attach as Exhibit 1 a list of those who have acted as inspectors of election since the organization of the defendant corporation. In each instance they were employees of the defendant corporation and chosen by the stockholders at the meeting. Messrs. Hunter and Halley were well qualified to act for the reason that they had been engaged constantly each day since the mailing of the notice to the stockholders of said meeting, in receiving, checking and tabulating the proxies received running to Messrs. Belt, Perkins and Brooke. And questions as to the Bonus By-law and contracts for the sale of stock to employees had not, and by reason of the restraining order entered in this cause could not, come before the said meeting.

The meeting then proceeded to take a stock vote by ballot for the election of two Inspectors of

Election and when such vote was delivered to me for ascertainment thereof I found that Mrs. Ethel V. Jackson had voted her five shares and that I had also voted her same shares by virtue of the proxy theretofore given by her and running to me. I called this to the attention of Mrs. Jackson, who stated that she desired to vote her own shares, so I prepared and delivered to her a written revocation of the proxy running to me, which she signed and delivered to me and I returned to her the said proxy. She then voted her shares and I credited the previous tabulation of those present in person by including her name therein, as is shown in the corrected tabulation above, and deducted from the total of the proxies running to me as shown above her said shares and corrected the ballot which I prepared for the election of the two Inspectors of Election accordingly.

I then announced the result of the stock vote thus taken for the office of the two Inspectors of Election to be as follows:

E. C. Hunter, 1,329,296 Shares;

W. J. Halley, 1,329,241 Shares;

James H. Scott, Jr., 241,431 Shares;

and declared Messrs. Hunter and Halley duly elected as the two Inspectors of Election and delivered the ballots to the Secretary of the meeting with the request that the same be preserved among the records of the meeting. Messrs. Hunter and Halley were thereupon duly sworn by Mr. Kenneth B. McLaren, a Notary Public of the State of New Jersey, for the faithful performance of their duties

at such election and said oath as subscribed by them was delivered to the Secretary of the meeting to be preserved among the records thereof.

Motion was then duly made, seconded and adopted that the meeting proceed with the election by ballot of eleven (11) Directors (that being the number of Directors prescribed by the By-laws of the defendant corporation), to hold office until the next annual meeting of the stockholders or until their successors were duly elected and qualified.

Col. Anderson objected and protested against the election of Directors. He read from a few proxies running to me which were executed by fiduciaries, and claimed that the same were invalid and further contended that his clients were entitled to challenge each and every proxy running to me before the said Inspectors of Election and have a judicial determination then and there made by said Inspectors upon each and every such proxy before the same could be counted or voted for the election of Directors. Both Mr. Bocock and Mr. McCarter likewise objected and joined in the protest.

I noted and overruled these objections by Col. Anderson and Messrs. Bocock and McCarter. The proxies running to me had been checked and verified as received by the said Messrs. Hunter and Halley. They already knew that said proxies came only from stockholders of record at 3:00 P. M. on February 9, 1931, and represented only shares owned by such stockholders of record at that time. I did not consider the legal question as to these proxies within the province of the Inspectors as they had, and generally have, no legal training.

I knew of no law, decision or practice supporting the procedure requested and none was cited to me. The number of such proxies was so large that such a course of procedure would have unduly protracted the meeting without any different result. The proxies, stock records and list are being preserved and can be produced before any tribunal having jurisdiction at the instance of any one aggrieved so that no injury can really have been done any one.

Mr. Todd Wool thereupon nominated the following to be elected as such Directors of the defendant corporation, namely: Benjamin L. Belt, David H. Ball, Earl J. Bush, William W. Drewry, J. Strother Freeman, George H. Hummel, James T. Keel, Everett Meyer, Alva H. Shinkle, Harry A. Stout, E. Grayson Weymouth, and Mr. Prentis seconded the nominations.

Mr. McCarter nominated as a Director of the defendant corporation Mr. James H. Scott, Jr., one of the complainants in this cause, who had previously been placed in nomination for the office of Inspector of Election. This nomination was seconded by Mr. Bocock.

On motion made by Mr. McCarter, seconded by Mr. Prentis, nominations for Directors were thereupon declared to be closed.

Col. Anderson objected to the individuals nominated for Directors by Mr. Wool on the ground that they were ineligible as no evidence had been presented that they were stockholders of the defendant corporation. Deponent directed Col. Anderson's attention to the fact that the stock list, the transfer books and stock books of the defendant corpo-

ration had been produced at the convening of the meeting for the inspection of the stockholders present, still were available for such inspection and that he could satisfy himself with respect to the objections by an examination thereof. Col. Anderson still urged his objection on the ground that while he had no direct information with respect thereto it could be a fact, that if any of the said individuals nominated by Mr. Wool were recorded in said lists, stock books or transfer books as holders of stock of the defendant corporation, that such stock had been transferred to them merely for the purpose of qualifying them for such office, and that no evidence had been submitted that they were bona fide stockholders. Neither Col. Anderson nor any of his associates made any effort to examine said stock list or said books, or any of them.

As a matter of fact, to my personal knowledge, each of the individuals nominated by Mr. Wool was then a Director of defendant corporation and had been such a Director at least for the last two years and was then, and during such period had been, a bona fide stockholder of defendant corporation and appearing as such on the stock lists and records of the defendant corporation.

By reason of all the foregoing, it was then 3:26 o'clock P. M. (without any intermission for lunch or otherwise) and Col. Anderson and Messrs. Bocock and McCarter having ceased, for the time being, to protest and to object, I entertained a motion, duly made, seconded and adopted, that the polls for the election of Directors remain open for two hours, commencing at 3:30 o'clock P. M. and

closing at 5:30 o'clock P. M. and at the time designated, namely, 3:30 o'clock P. M., I declared the polls to be open and that the Inspectors of Election were prepared to receive the votes of the stockholders for the election of eleven Directors of the defendant corporation for the ensuing year or until their successors were duly elected and qualified.

Col. Anderson and Mr. McCarter insisted that they had a right to interrogate the Inspectors of Election upon and have said Inspectors decide the validity of the proxies running to Messrs. Belt, Perkins and Brooke; and Mr. McCarter demanded of the Inspectors of Election to then and there answer whether or not they would allow to be voted a certain proxy, which he had selected from one of the bundles thereof running to me, dated February 18th, 1931, covering stock in the name of Horace B. Phillips and signed by Horace W. Phillips, Jr., Administrator, Estate Horace B. Phillips. Col. Anderson insisted that he had the right to ask the Inspectors of Election to decide then and there whether they would permit to be voted a certain proxy, which he likewise had selected from one of the bundles of proxies running to me, signed "The President and Trustees of Hampden-Sydney College" and he reiterated his right to inspect said proxies running to me and to select therefrom those signed by fiduciaries or any others that he saw fit and have the Inspectors of Election then and there pass upon the validity of each and determine the question whether they would permit the same to be voted.

I again stated that the Inspectors were not a court of law to pass on these legal questions and

no such duty was imposed upon them; that their duty was to ascertain if the proxies and ballots were from stockholders entitled to vote at this meeting and for the proper number of shares according to said stock list and said stock records.

Thereupon, the stockholders, present as aforesaid, presented their ballots and delivered them to the Inspectors of Election.

Col. Anderson at this point asked several questions concerning the contracts between the defendant corporation and its employees for the purchase of stock under said resolution of March 10th, 1925. Mr. Charles Foster Brown also asked a number of questions with respect to the same contracts and endeavored to move the adoption of a resolution. As I did not deem such questions or resolution germane either to the matter then before the meeting, namely, the voting by the stockholders for the election of Directors or to matters allowed by the order of the Court to be considered, I ruled that said questions and resolution were out of order.

Col. Anderson then stated that he and his associates and clients did not desire to remain until the closing of the polls and the adjournment of the meeting, and asked me if there was any further business to be transacted other than the closing of the polls, the receipt and adoption of the report of the Inspectors of Election, the filing of the same and the ballots for said Directors, the declaration of the election of such Directors and the adjournment of the meeting. I advised Col. Anderson that such was the fact, except that I would present to the meeting a statement with respect to the adjournment of the meeting and the reason therefor.

He asked me if I would state to him informally the character of such statement. I told him that I had it in writing and as an accommodation to him would let him read the same, which he did. He thereupon asked if he might file a written statement of protest to be regarded as having been made when the report of the Inspectors was rendered. To this I agreed and received from Col. Anderson said protest in writing.

Thereupon all present departed except Mr. Charles Foster Brown, who remained but left before the polls closed, and Messrs. Joseph A. Dart, Peter B. Prentis, L. E. Clemons, E. C. Hunter, W. J. Halley, Todd Wool and deponent, who remained until the meeting adjourned.

While awaiting the closing of the polls and the report of the Inspectors of Election I ascertained in checking over the records of the meeting that in listing the stockholders present in person I had not been included as present in my capacity as agent for the 53,938 shares of stock standing of record in my name as agent under the existing contracts between the defendant corporation and its employees selling stock to such employees under the authority of the resolution adopted by the stockholders on March 10, 1925. I therefore added to such list, as shown above, my name as agent for the 53,938 shares I had voted as such agent for Inspectors and Directors. As this ascertainment occurred after Col. Anderson and Messrs. McCarter and Bocock and their clients had departed, I caused the minutes of the meeting to state that the objections which the bill of complaint alleges with respect to the voting of such stock should be deemed to have been made by them at the meeting to my

voting of such stock. I have voted such stock as such agent at many meetings of the stockholders of the defendant corporation. A certificate has been issued in my name as agent and such shares appear on the stock records and transfer books of the defendant corporation and are included among those listed upon the New York Stock Exchange. This is pursuant to the express terms of such contracts, which provide that as such agent I shall possess the voting rights and powers with respect to the shares embraced in said contracts. Such shares also stand in my name as such agent for the purpose of my collecting and distributing the dividends and exercising other powers, which makes me under such contracts the trustee of an active trust in respect to such shares.

At 5:30 o'clock P. M., the time for the closing of the polls having arrived, I announced that the polls were closed and requested the said Inspectors of Election to count the votes and report in writing to the meeting the results of the election.

Later the said Inspectors presented their report in writing, to the effect that they had honestly, faithfully and impartially received and canvassed the votes cast and thereby found and reported that there had been voted for Benjamin L. Belt 1,333,522 shares, for Messrs. David H. Ball, Earl J. Bush, William W. Drewry, J. Strother Freeman, George H. Hummel, James T. Keel, Everett Meyer, Alva H. Shinkle, Harry A. Stout and E. Grayson Weymouth 1,333,022 shares each, and for James H. Scott, Jr., 219,082 shares. It thus appeared from said report that there had voted at said election of Directors 1,552,104 shares out of a total of 1,998,780 shares entitled to vote. After the adjourn-

ment of the meeting I discovered that by error in making out my ballots I had failed to the extent of 9,393 shares to vote the shares I was entitled to vote in said election. Adding these shares to those voted would make voting at said election approximately 78% of the shares entitled to vote in said election and correspondingly increase the vote of those elected.

Thereupon, in accordance with my promise to Colonel Anderson, I caused to be spread upon the minutes the protest in writing he had left with me, which is as follows:

> "On behalf of the stockholders represented by myself and associates already stated I desire to enter a protest against the report of the Inspectors, and against declaring the persons reported by them as having been elected Directors of the Company upon the ground that the stock alleged to be represented by Benjamin L. Belt, William R. Perkins and H. Laurence Brooke or any of them has been illegally voted and counted in said election, the reasons for said objection and protest having been hereinbefore stated at length and are hereby referred to as if again repeated."

On motion duly made and seconded, the said report of the said Inspectors was accepted and it, together with the said oath of the said Inspectors and the ballots delivered to them were directed to be safely kept in the files of the defendant corporation. I thereupon declared that the following stockholders of the defendant corporation, namely, Messrs. Benjamin L. Belt, Earl J. Bush, J. Strother Freeman, James T. Keel, Alva H. Shinkle, David

H. Ball, William W. Drewry, George H. Hummel, Everett Meyer, Harry A. Stout and E. Grayson Weymouth had received the greatest number of votes and had been duly elected as such Directors until the next annual meeting of the stockholders or until their successors were duly elected and qualified.

I then made to the meeting the statement which I had permitted Col. Anderson to read, as hereinabove related, namely, that there was then pending in the New Jersey Chancery Court, a suit between James H. Scott, Jr., et als., complainants, and P. Lorillard Company, et als., defendants, and that in such suit orders had been entered which temporarily restrained any voting upon the other matters and things mentioned in the said notice of this meeting and directed that the meeting be adjourned to Tuesday, April 21, 1931, at the place and hour stated in said notice and fixed and continued 3:00 o'clock P. M. on February 9, 1931, as the record date for determining the stockholders entitled to vote at said adjourned meeting, or any further adjournment thereof.

Thereupon, at 5:45 o'clock P. M., on motion duly made, seconded and adopted, the meeting adjourned, pursuant to the Order of said Court, to April 21, 1931, at the same place and hour, namely, 11:00 o'clock in the forenoon at Room 803, 15 Exchange Place, Jersey City, New Jersey.

The number of shares voted by me at said meeting at such agent was 53,938 and I have examined and ascertained that the number of shares voted by me at such meeting under proxies from fiduciaries was 80,654, including therein all proxies from exec-

utors, administrators, guardians, trustees, curators, committees and attorneys in fact. Accordingly, if all such shares be eliminated and disregarded the holding, action and results of said meeting would not be affected thereby.

I am satisfied that at said meeting no votes were cast except by, or under a proxy from, a stockholder of said defendant corporation of record at 3:00 o'clock P. M. on February 9, 1931, and in strict accordance with the number of shares shown by such record to have been owned by such stockholder at said time. In each instance verification by such record was accurately made and carefully followed. The proxies and stock books, records and list are being carefully preserved and can at any time be produced, in substantiation, before any court having jurisdiction.

H. LAURENCE BROOKE.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 20th day of March, 1931, as witness my notarial seal.

E. R. DANIELSEN
Notary Public, Westchester County
N. Y. Co Clks. No. 687, Reg. No. 1D61A
Bronx Co. Clks. No. 52, Reg. No. 3147A
Commission Expires March 30, 1931

[NOTARIAL SEAL]

EXHIBIT 1, WITH AFFIDAVIT OF H. LAURENCE BROOKE

Meeting	*Inspectors*	*How Chosen*
Nov. 24, 1911	J. Nicoll, Jr. and A. MacCallum	By the meeting
Mar. 12, 1912	Archie MacCallum and H. D. Newton	By the meeting
Mar. 11, 1913	Sidney Kelly and W. B. Leonard	By the meeting
Mar. 10, 1914	W. B. Leonard and Sidney Kelly	By the meeting
Mar. 9, 1915	J. Nicoll, Jr. and Thos. F. Byrnes	By the meeting
Mar. 14, 1916	James Nicoll, Jr. and T. F. Byrnes	By the meeting
Mar. 13, 1917	James Nicoll, Jr. and T. F. Byrnes	By the meeting
Mar. 12, 1918	James Nicoll, Jr. and T. F. Byrnes	By the meeting
Mar. 11, 1919	James Nicoll, Jr. and T. F. Byrnes	By the meeting
Mar. 9, 1920	James Nicoll, Jr. and T. F. Byrnes	By the meeting
Mar. 8, 1921	James Nicoll, Jr. and T. F. Byrnes	By the meeting
Mar. 14, 1922	James Nicoll, Jr. and T. F. Byrnes	By the meeting
Mar. 13, 1923	James Nicoll, Jr. and T. F. Byrnes	By the meeting

Exhibit 1, with Affidavit of H. Laurence Brooke

Meeting	*Inspectors*	*How Chosen*
Mar. 11, 1924	James Nicoll, Jr. and T. F. Byrnes	By the meeting
Mar. 10, 1925	James Nicoll, Jr. and W. E. Dugan	By the meeting
Mar. 9, 1926	James Nicoll, Jr. and W. E. Dugan	By the meeting
Mar. 8, 1927	E. C. Hunter and W. C. McClenaghan	By the meeting
Mar. 13, 1928	E. C. Hunter and A. Riefner	By the meeting
Mar. 12, 1929	E. C. Hunter and A. Riefner	By the meeting
Mar. 11, 1930	E. C. Hunter and A. Riefner	By the meeting
Mar. 10, 1931	E. C. Hunter and W. J. Halley	By the meeting

NOTE: The meeting of November 24, 1911, was the organization meeting of the Company. The other meetings were the annual meetings of the Company. In each instance the Inspectors were employees of P. Lorillard Company at the time and they were chosen by the stockholders at the meeting of stockholders.

Affidavit of Todd Wool for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

TODD WOOL, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is Todd Wool. I reside in Bronxville, New York, and am over 21 years old.

I am a lawyer associated in the practice of the law with Mr. William R. Perkins, 535 Fifth Avenue, New York City, who is General Counsel for the defendant corporation, in the above entitled cause; otherwise I am not connected with said defendant corporation.

I was present at the annual meeting of stockholders of said defendant corporation, held March 10, 1931, as the holder of a proxy and remained throughout the whole of said meeting. It convened at 11:00 o'clock in the forenoon at Room 803, No. 15 Exchange Place, Jersey City, New Jersey, and adjourned at 5:45 o'clock P. M. of that day. I have read the foregoing and attached affidavit of H. Laurence Brooke entitled in said cause and dated this day setting forth what occurred at said annual meeting. It correctly sets forth what occurred there.

Having attended Hampden-Sydney College, I wrote it concerning the proxy mentioned in the said affidavit of Mr. Brooke and received a reply from Mr. P. Tulane Atkinson, its Financial Secretary, whom I know, saying that it was signed by him, that "I have been signing these proxies for twelve

years" and that he wishes me to do for him, or he will do, whatever I think desirable about the proxy.

TODD WOOL.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 20th day of March, 1931, as witness my notarial seal.

E. R. DANIELSEN
Notary Public, Westchester County
N. Y. Co. Clks. No. 687, Reg. No. 1D61A
Bronx Co. Clks. No. 52, Reg. No. 3147A
Commission Expires March 30, 1931

[NOTARIAL SEAL]

Affidavit of Leslie E. Clemens for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

LESLIE E. CLEMENS, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is Leslie E. Clemens. I reside in New York City and am over 21 years old.

I have been employed by the defendant corporation in the above entitled cause since November 19, 1904, and am now the Assistant Secretary and Assistant Treasurer of said corporation.

I was present at the annual meeting of stockholders of said defendant corporation, held March 10, 1931, as the holder of a proxy and remained throughout the whole of said meeting. It convened at 11:00 o'clock in the forenoon at Room 803, No. 15 Exchange Place, Jersey City, New Jersey, and adjourned at 5:45 o'clock P. M. of that day. I have read the foregoing and attached affidavit of H. Laurence Brooke entitled in said cause and dated this day setting forth what occurred at said annual meeting. It correctly sets forth what occurred there.

LESLIE E. CLEMENS.
L. E. CLEMENS.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 20th day of March, 1931, as witness my notarial seal.

E. R. DANIELSEN
Notary Public, Westchester County
N. Y. Co. Clks. No. 687, Reg. No. 1D61A
Bronx Co. Clks. No. 52, Reg. No. 3147A
Commission Expires March 30, 1931

[NOTARIAL SEAL]

Affidavit of Peter B. Brentis for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

PETER B. PRENTIS, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is Peter B. Prentis. I reside in New York City and am over 21 years old.

I am an employee of the defendant corporation and have been an employee of it continuously since October 1, 1927.

I was present at the annual meeting of stockholders of said defendant corporation, held March 10, 1931, as the holder of a proxy and remained throughout the whole of said meeting. It convened at 11:00 o'clock in the forenoon at Room 803, No. 15 Exchange Place, Jersey City, New Jersey, and adjourned at 5:45 o'clock P. M. of that day. I have read the foregoing and attached affidavit of H. Laurence Brooke entitled in said cause and dated this day setting forth what occurred at said annual meeting. It correctly sets forth what occurred there.

PETER B. PRENTIS.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 20th day of March, 1931, as witness my notarial seal.

E. R. DANIELSEN
Notary Public, Westchester County
N. Y. Co. Clks. No. 687, Reg. No. 1D61A
Bronx Co. Clks. No. 52, Reg. No. 3147A
Commission Expires March 30, 1931

[NOTARIAL SEAL]

Affidavit of William J. Halley for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

WILLIAM J. HALLEY, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is William J. Halley. I reside in Bellaire, New York. I have been employed by the defendant company in the above entitled cause since December, 1918, and am now Assistant to the Comptroller of said defendant company.

In advance of the holding of the annual meeting of the defendant company on March 10, 1931, Mr. Edward C. Hunter and myself checked and verified the proxies received for said meeting running to Messrs. Belt, Perkins and Brooke with the stock list and stock records of the defendant company, and thereby ascertained that they were from stockholders of the defendant company of record at 3 o'clock P. M. on February 9, 1931, and embraced only the shares owned by such stockholders of record at that time.

At said annual meeting on March 10, 1931, in conjunction with Mr. Edward C. Hunter I acted as inspector of election. As such inspectors we received and canvassed and reported the vote cast by the stockholders present in person or by proxy for the election of directors fully, faithfully, honestly and impartially, in accordance with our oath and the report in writing that we made thereof.

There was produced at said convening, and remained throughout said meeting, (1) the transfer

books and stock books of defendant company required by statute to be kept by it at its said principal office in the State of New Jersey, to wit, No. 15 Exchange Place, Jersey City, and (2) a list showing, in alphabetical order, the names and addresses of the preferred and common stockholders of defendant company, with the number of shares held by each at 3 o'clock P. M. on February 9, 1931, duly certified by the transfer agent of defendant corporation.

No votes were cast except by, or under a proxy from, a stockholder of said defendant company of record at 3 o'clock P. M. on February 9, 1931, and in strict accordance with the number of shares shown by such record to have been owned by such stockholders at such time. In each instance verification had been accurately made and was carefully followed.

WILLIAM J. HALLEY.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 20th day of March, 1931, as witness my notarial seal.

E. R. DANIELSEN
Notary Public, Westchester County
N. Y. Co. Clks. No. 687, Reg. No. 1D61A
Bronx Co. Clks. No, 52, Reg. No. 3147A
Commission Expires March 30, 1931

[NOTARIAL SEAL]

Affidavit of Edward C. Hunter for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

EDWARD C. HUNTER, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is Edward C. Hunter. I reside in New York City. I have been employed by the defendant company in the above entitled cause since July, 1906, and am now the Assistant Auditor of said defendant company.

I acted as one of the inspectors of election at the annual meetings of the stockholders of the said defendant company held March 8, 1927, March 13, 1928, March 12, 1929, March 11, 1930 and March 10, 1931. Each time I was chosen such inspector at the meeting of stockholders by the stockholders present.

In advance of the holding of the annual meeting of the defendant company on March 10, 1931, Mr. William J. Halley and myself checked and verified the proxies received for said meeting running to Messrs. Belt, Perkins and Brooke with the stock list and stock records of the defendant company, and thereby ascertained that they were from stockholders of the defendant company of record at 3 o'clock P. M. on February 9, 1931, and embraced only the shares owned by such stockholders of record at that time.

At said annual meeting on March 10, 1931, in conjunction with Mr. William J. Halley I acted as inspector of election. As such inspectors we received and canvassed and reported the vote cast by the stockholders present in person or by proxy for the election of directors fully, faithfully, honestly and impartially, in accordance with our oath and the report in writing that we made thereof.

There was produced at said convening, and remained throughout said meeting, (1) the transfer books and stock books of defendant company required by statute to be kept by it at its said principal office in the State of New Jersey, to wit, No. 15 Exchange Place, Jersey City, and (2) a list showing, in alphabetical order, the names and addresses of the preferred and common stockholders of defendant company, with the number of shares held by each at 3 o'clock P. M. on February 9, 1931, duly certified by the transfer agent of defendant corporation.

No votes were cast except by, or under a proxy from, a stockholder of said defendant company of record at 3 o'clock P. M. on February 9, 1931, and in strict accordance with the number of shares shown by such record to have been owned by such stockholders at such time. In each instance verification had been accurately made and was carefully followed.

EDWARD C. HUNTER.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 20th day of March, 1931, as witness my notarial seal.

E. R. DANIELSEN
Notary Public, Westchester County
N. Y. Co. Clks. No, 687, Reg. No. 1D61A
Bronx Co. Clks. No, 52, Reg. No. 3147A
Commission Expires March 30, 1931

[NOTARIAL SEAL]

Affidavit of H. Laurence Brooke for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

H. LAURENCE BROOKE, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is H. Laurence Brooke. I reside in the City, County and State of New York, and have been connected with P. Lorillard Company, a New Jersey corporation, one of the defendants in the above entitled cause, as Assistant Counsel since on or about May 1, 1925, and as Secretary of said company since on or about July 1, 1927. I am still Secretary and Assistant Counsel of the said company.

I have never denied at any time to any of the complainants mentioned in the bill of complaint filed in the above entitled cause or to any agent or attorney of any of them the right to inspect the stock books or the transfer books of the said company on deposit with and in the possession of The Corporation Trust Company, a New Jersey corporation, with its principal office at 15 Exchange Place, Jersey City, New Jersey, or on deposit with and in the possession of the New York Trust Company, a New York corporation, with offices at 100 Broadway in the City, County and State of New York, the Transfer Agent of the said P. Lorillard Company in the State of New York; I have not denied the right to any of the said complainants

or to any of their attorneys or agents to inspect and make excerpts from the alphabetical list of the stockholders of the said P. Lorillard Company, prepared and certified at my instance by the said New York Trust Company for the annual meeting of the stockholders of the said P. Lorillard Company to be held on the 10th day of March, 1931, at 11 o'clock in the forenoon at the office of the said P. Lorillard Company, Room 803, 15 Exchange Place, Jersey City, New Jersey, being likewise the office of the said The Corporation Trust Company, and caused by me to be delivered to the said The Corporation Trust Company at the time prescribed by the Statute Law of the State of New Jersey;

That I have duly caused to be prepared for said annual meeting two copies of said list of stockholders, one of which I caused to be delivered as aforesaid to the said The Corporation Trust Company and the other I retained at the executive offices of the said P. Lorillard Company at 119 West 40th Street in the City of New York, for use in verifying, tabulating and checking the proxies of the stockholders of the company sent to and received at said offices for the said annual meeting of said stockholders; on February 27, 1931 I received a call at the said executive offices of the said P. Lorillard Company at 119 West 40th Street, New York City, from an individual who gave his name as John J. Kearns and stated that he was a member of the firm of F. B. Keech & Company, 52 Broadway, New York City. Said John J. Kearns is not a registered stockholder of said P. Lorillard Company, although said firm of F. B. Keech & Company is a registered stockholder. While he

made no specific demand of me he spoke of the list of stockholders and as soon as he mentioned the list I told him that he was entitled to exercise his legal rights with respect thereto and that neither I nor any other officer or employee of P. Lorillard Company would interfere in any way with his exercise of such rights but that I as an officer and assistant counsel of said company could not advise him with respect to his rights. He replied "That is fair enough", and left. Later he asked me whether I would give him a letter to the New York Trust Company. Without inquiring what form of letter he desired I refused to give him a letter. I had never seen him before. I could not offer him the use of the list of stockholders against which the proxies which had then come in and were constantly coming in were being checked. Later, on the same day, James H. Scott, Jr., one of the complainants, called on me at the same place and said he desired to make a formal demand for access to the stock list of the company and handed me the letter of which a copy is annexed to the bill of complaint as Exhibit 6. He left said letter and an exactly similar letter signed by F. B. Keech & Company, and departed. I immediately replied to said James H. Scott, Jr., and said F. B. Keech & Company by letter a copy of which is annexed to the bill of complaint as Exhibit 7; the calls made upon me by both said John J. Kearns and said James H. Scott, Jr., were made at said office of the company at 119 West 40th Street, in the City of New York, which said office is not the office of any Transfer Agent of the said P. Lorillard Company

and is not the principal office of the said P. Lorillard Company. No stock books or transfer books of the said P. Lorillard Company are kept or maintained thereat.

I further denied the request over the long distance telephone of one Buford Scott, of Richmond, Virginia, one of the said complainants, that I prepare for him a list of such stockholders.

H. LAURENCE BROOKE.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 6th day of March, 1931, as witness my notarial seal.

L. E. CLEMENS
Notary Public, Bronx Co. No. 44
Registered Bronx Co. No. 3229
Certificate filed N. Y. Co. No. 284 Reg. No. 2C222
Commission Expires March 30, 1932

[NOTARIAL SEAL]

Affidavit of Clarence E. Currey, for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

CLARENCE E. CURREY, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is Clarence E. Currey. I reside in the Town of East Orange, County of Essex, State of New Jersey. I am one of the Assistant Secretaries of the New York Trust Company, a New York corporation, having its principal office at 100 Broadway in the City and State of New York; that the said New York Trust Company is the Transfer Agent of P. Lorillard Company, a New Jersey corporation, with offices for the transaction of business at 119 West 40th Street in the City, County and State of New York; that the said New York Trust Company, as said Transfer Agent, has and keeps in its possession, the same having been deposited with it several years ago by the said P. Lorillard Company, the books known as the Stock Books of the said P. Lorillard Company, containing the names, alphabetically arranged, of all persons who are stockholders of the said P. Lorillard Company, showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners thereof; and that such books are open daily, during business hours, for inspection and in order to make extracts therefrom by any stockholder of rec-

ord of said P. Lorillard Company; that I have received no request or demand from any stockholder of record of the said P. Lorillard Company to be permitted or allowed to examine any of said Stock Books on or subsequent to the 9th day of February, 1931 or at any time during the said year of 1931; that I have inquired of and among the other officers and employees of the said New York Trust Company and, with the exception of Irving L. Bennett, an Assistant Secretary of the said New York Trust Company, am informed and believe that none of the said officers or employees of the said New York Trust Company has received any request from anyone claiming to be a stockholder of the said P. Lorillard Company to be permitted or allowed to examine any of said Stock Books or to make extracts therefrom at any time during the present year of 1931.

CLARENCE E. CURREY.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 6th day of March, 1931, as witness my notarial seal.

F. M. AUKAMP
F. M. AUKAMP
Notary Public, Kings Co. No. 236, Reg. No. 1046
Cert. filed in N. Y. Co. No. 43, Reg. No. 1A35
Commission expires March 30th, 1931

[NOTARIAL SEAL]

Affidavit of Irving L. Bennett for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

IRVING L. BENNETT, of full age, being duly sworn according to law, upon his oath deposes and says:

My name is Irving L. Bennett. I reside in the Town of Short Hills, County of Essex, State of New Jersey. I am one of the Assistant Secretaries of the New York Trust Company, a New York corporation, having its principal office at 100 Broadway in the City and State of New York; that the said New York Trust Company is the Transfer Agent of P. Lorillard Company, a New Jersey corporation, with offices for the transaction of business at 119 West 40th Street in the City, County and State of New York; that the said New York Trust Company, as said Transfer Agent, has and keeps in its possession, the same having been deposited with it several years ago by the said P. Lorillard Company, the books known as the Stock Books of the said P. Lorillard Company, containing the names, alphabetically arranged, of all persons who are stockholders of the said P. Lorillard Company, showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners thereof; that such books are open daily, during business hours, for inspection and in order to make extracts therefrom by any stockholder of record of said P. Lorillard Company; that I have

received no request or demand from any stockholder of record of the said P. Lorillard Company to be permited or allowed to examine any of said Stock Books on or subsequent to the 9th day of February, 1931 or at any time during the said year of 1931, except as hereinafter mentioned; that I have not at any time within said periods denied the right to any stockholder of said P. Lorillard Company to examine the said Stock Books or to make extracts therefrom; that on one day during the week beginning with Sunday, the 22nd day of February, 1931, the exact date I do not remember though I believe it to have been either Thursday, the 26th, or Friday, the 27th day of February in said year, someone, without divulging his name and without claiming to be a stockholder of the said P. Lorillard Company, requested of me over the telephone permission to examine the said Stock Books; that I referred this anonymous caller to the said P. Lorillard Company.

I. L. BENNETT.
Assistant Secretary.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 6th day of March, 1931, as witness my notarial seal.

F. M. AUKAMP
F. M. AUKAMP
Notary Public, Kings Co. No. 236, Reg. No. 1046
Cert. filed in N. Y. Co. No. 43, Reg. No. 1A35
Commission expires March 30th, 1931

[NOTARIAL SEAL]

Affidavit of Alfred F. McCabe for the Defendant.

Filed March 24, 1931

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

ALFRED F. MCCABE, of full age, being duly sworn according to law, upon his oath, deposes and says:

My name is Alfred F. McCabe. I reside in the Borough of Brooklyn, County of Kings, State of New York. I am an assistant Secretary of The Corporation Trust Company, a New Jersey corporation, having its principal and registered office at 15 Exchange Place, Jersey City, New Jersey. That the said The Corporation Trust Company is the Statutory Agent of P. Lorillard Company, a New Jersey corporation, which I understand has an office for the transaction of business at 119 West 40th Street, in the City, County and State of New York; that the principal and registered office in the State of New Jersey of the said P. Lorillard Company is the office of the said The Corporation Trust Company at 15 Exchange Place, Jersey City, New Jersey; that the said P. Lorillard Company keeps at said principal and registered office its Transfer Books in which is registered transfers of its stock and its Stock Books which contain the names and addresses of its stockholders and the number of shares held by them respectively; that the usual hours for business of the said The Corporation Trust Company are from 9 A. M. to 5 P. M. each and every day except Saturdays, Sundays and legal

holidays and that on Saturday the usual hours for business are from 9 A. M. to 12 o'clock noon; that on Friday, the 27th day of February, 1931, a person claiming to be James H. Scott, Jr., and representing himself to be a stockholder of record of the said P. Lorillard Company, called at the said office of the said The Corporation Trust Company, being the said principal and registered office in the State of New Jersey of the said P. Lorillard Company, and made a request of me that I permit and allow him to examine the list of stockholders of the said P. Lorillard Company, hereinafter more fully described; that after verifying the fact that he was the person he claimed to be and was a stockholder of the said P. Lorillard Company I told him that the said list of stockholders was not at the said office of the said The Corporation Trust Company, that it was not in my possession, custody or control and for that reason I could not comply with his request; he made no request of me or of any other officer and employee of the said The Corporation Trust Company to examine the Transfer Books or the Stock Books, hereinafter more specifically described, and has made no such request at any time either to me or to any of the other officers, and employees of the said The Corporation Trust Company, except on the one occasion hereinafter mentioned; that at 8:45 A. M. on Saturday, February 28, 1931, I received from the said P. Lorillard Company what were certified to be full, true and complete lists in alphabetical order, of all the stockholders of the said P. Lorillard Company entitled to vote at the annual meeting of the stockholders

of the said P. Lorillard Company, called to be held at 11 o'clock in the forenoon of March 10, 1931, at the said office of the said The Corporation Trust Company, with the residence of each and the number of shares held by each such stockholder; that the said lists have since the time of delivery to me been in the continuous possession of the said The Corporation Trust Company and still are in its possession; that on the said 28th day of February, 1931, the said James H. Scott, Jr., appeared at the said office of the said The Corporation Trust Company and requested permission of me to examine during the usual hours of business of the said The Corporation Trust Company the said lists of said stockholders; that I gave to the said James H. Scott, Jr., permission to examine said lists and allowed him to do so; that the said James H. Scott, Jr., forthwith began the examination of said stock lists taking excerpts therefrom at such times and on such days during the said usual hours for business as he saw fit, without let or hindrance from me or any other officer or employee of the said The Corporation Trust Company; that on the said 28th day of February, 1931, the said James H. Scott, Jr., and an individual whom he represented to me to be a photographer, requested that I permit him to allow them to make a photostatic copy of the entire said lists of stockholders; this I declined to do, and this is the only request that I refused or denied to the said James H. Scott, Jr.; that the said James H. Scott, Jr., has never made of me but one request to examine the Transfer Books or the Stock Books of the said P. Lorillard Company, and that

request was to examine only one entry in said books, which request I granted and accorded to him.

ALFRED F. MCCABE.

Subscribed and sworn to in the City of Jersey City, County of Hudson and State of New Jersey, before me, a Notary Public in and for the said County of Hudson and State of New Jersey, this 7th day of March, 1931, as witness my notarial seal.

HARRY W. MEEN,
Notary Public, N. J.

[NOTARIAL SEAL]

Supplemental Affidavit of H. Laurence Brooke for the Defendant.

Filed March 24, 1931

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

H. LAURENCE BROOKE, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the same H. Laurence Brooke who has made affidavits heretofore filed herein. I am the Secretary and Assistant Counsel of the defendant company.

A copy of the Certificate of Incorporation of said Company as amended is annexed to the affidavit of Benjamin L. Belt, President of said Company, filed herein. It is provided in said Certificate that the shares of Common Stock of said Company shall be without nominal or par value and that "the authorized shares of this Corporation without nominal or par value may be issued and sold from time to time, for such consideration and upon such terms and conditions as from time to time may be fixed by the Board of Directors." This was under and in accordance with Sec. 121 of the General Corporation Act of the State of New Jersey.

By resolution passed March 10, 1925 and again by resolution passed September 7, 1929, both of which are set forth in full in the said affidavit of the said Belt, the stockholders authorized the Board of Directors to sell not exceeding a specified number of the shares of Common Stock of said Com-

pany at not less than specified minimum prices, to such employees of the Company, at such times, in such manner, on such terms and in such amounts as the Board of Directors might from time to time determine for that purpose.

There has never been any provision in the Certificate of Incorporation on the subject of bonus to officers or employees and the original By-laws contained no provision on this subject. The present bonus by-law was adopted by the stockholders at the annual meeting on March 8, 1921 without the Board of Directors having taken any action whatever with respect thereto or with respect to its consideration by said meeting of stockholders. The Board had not formulated any such plan or passed a resolution declaring it advisable, nor did it call such annual meeting to take action thereon.

Neither the Certificate of Incorporation nor the By-laws have ever contained any provision for or with respect to the sale of shares to officers or employees of the Company.

The said resolution passed by the stockholders on March 10, 1925 was passed at an annual meeting of the stockholders of the Company, which had not been called to consider the same; and the Board of Directors had not formulated any plan therefor or passed a resolution declaring it advisable, or taken any action whatever with respect to it.

The said resolution passed by the stockholders on September 7, 1929 was passed at a special meeting of the stockholders called for the purpose of amending the Certificate of Incorporation so as to increase the authorized Common Stock of the Company and change it to shares without nominal or

par value. This call stated as one object of the meeting the authorization of the issuance and sale to employees of the said 150,000 shares by the Board of Directors at not less than $20 per share; but the Board of Directors did not formulate any plan or plans in that respect or declare the passage of such a resolution or the giving of such authority advisable.

The Board of Directors has not taken any action whatever with respect to the proposed amendment of the bonus by-law or the proposed revision of said resolutions of March 10, 1925 and September 7, 1929, either by way of formulating a plan therefor or declaring the same advisable or calling the annual meeting of stockholders to be held March 10, 1931 to take action thereon; it has taken no action whatever in any of such respects.

Said resolutions were not framed or offered for passage under Section 158 of the General Corporation Act of New Jersey; nor is the proposed revision of said resolutions to be taken under Section 158-b. The intention is not to preclude or cut off the pre-emptive rights of non-assenting stockholders as respects the shares of Common Stock authorized to be sold. The resolutions simply afford a means of allowing the stockholders, by their own vote, to waive their pre-emptive rights as respects such sales of such shares to the extent the stockholders so desire.

For the information of the Court, I attach hereto as an Exhibit the circular letter and of the supplement thereto which the defendant company will mail to the stockholders in reply to the circular let-

Supplemental Affidavit of H. Laurence Brooke for the Defendant

ter to stockholders of Messrs. Scott & Stringfellow, draft of which has been filed in this suit.

H. LAURENCE BROOKE.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 1st day of April, 1931, as witnes my notarial seal.

E. R. DANIELSEN
Notary Public, Westchester County
N. Y. Co. Clks. No. 131, Reg. No. 3D68
My Commission Expires March 30, 1933.

[NOTARIAL SEAL]

EXHIBIT, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF H. LAURENCE BROOKE

P. LORILLARD COMPANY

119 West 40th Street

New York City

OFFICE OF THE PRESIDENT.

April 1, 1931.

TO THE STOCKHOLDERS OF

P. LORILLARD COMPANY:

Messrs. Scott & Stringfellow, a stock brokerage firm of Richmond, Virginia, have published and mailed a circular letter soliciting your proxies. This brings to your attention a suit in which that firm is seeking to prevent the holding of the annual meeting of stockholders, which had for its objects election of Directors, amendment of the bonus by-law, revision of the resolutions authorizing sale of Common Shares to employees, and cancellation of the contracts outstanding under those resolutions.

I regret this controversy because I realize the detrimental effect it may have on the Company, both with its organization and the public. I made every reasonable effort to prevent it. What I did for this purpose you will see from my letter to Mr. Fred W. Scott, senior member of that firm, which is printed in the supplement hereto. I have received no answer to that letter.

Exhibit, Annexed to Supplemental Affidavit of H. Laurence Brooke

No decision on the merits has been rendered. Yet Messrs. Scott & Stringfellow are asking for proxies for the meeting they have asked the Court to enjoin. This indicates how little faith they have in the Court sustaining their contentions.

CLAIM THAT STOCKHOLDERS HAVE INSUFFICIENT INFORMATION

Both in the circular letter and suit this firm most unjustly seeks to make the stockholders believe that they have not been furnished sufficient information.

The letter says "no report was made of the Company's conditions and prospects" at the annual meeting. And yet in advance of the annual meeting the Company, in accordance with its custom, had mailed the usual annual statement to stockholders. It was this statement which furnished the figures used in the letter and caused the firm in its letter to say: "The P. Lorillard Company is in excellent financial condition." I fail to see how any complaint can be justly made on this score.

The letter says further that opportunity to check or count proxies at the annual meeting was denied. And yet the stenographic notes which this firm took of the meeting not only show the presentation of the stock records and these proxies for examination, but that such presentation of the proxies was called to the attention of Colonel Henry W. Anderson, of counsel for the firm, who thereupon said to Mr. Brooke, the Chairman:

"I understand that there is a satchel full here. To start that investigation would be a

Exhibit, Annexed to Supplemental Affidavit of H. Laurence Brooke

little laborious. As I understand it, they are running to Mr. Belt, Mr. Perkins and yourself, and that they are on the table here and were put on the table, as I understand it, for examination. I will do it a little later if you insist."

Affidavits filed in the suit go to the extent of denying that the stockholders were informed that the "Benjamin L. Belt, William R. Perkins and H. Laurence Brooke", named in the proxies sent out by the management, are officers and employees of the Company, or that Directors might participate under the bonus by-law and resolutions authorizing sale of shares to employees, or that Directors were purchasers under some of the contracts that might be cancelled.

How sincere this firm is in such denials you will realize when I remind you that the proxy was subjoined to a notice of the annual meeting signed "H. Laurence Brooke, Secretary", accompanied by a letter on the "Office of the President" stationery of the Company signed "B. L. Belt, President"; that the proposed bonus by-law was enclosed with the notice of the annual meeting and on its face expressly allows participation by the President, Vice-Presidents and all other officers and employees; that the proposed revision of these resolutions was enclosed with such notice and on its face expressly allows shares to be sold to "officers and employees"; that the New Jersey Statute requires the President to be a Director and the Directors to be stockholders and terms the Directors officers;

and that the By-laws of the Company have always required the President and the five Vice-Presidents to be Directors.

I cannot believe that the stockholders did not know who was the President or Secretary of their Company or did not understand the terms of the proposed revision of the bonus by-law and of the resolutions authorizing the sale of shares to employees which were enclosed with the notice of the annual meeting or thought that the important officials of the Company were not participating under them. It has been the well-known policy of the Company from its organization that its Directors should be only those who are employees, giving their time exclusively to its affairs.

PROPOSED CHANGE OF CONTRACTS

Quite unfair on this subject are the statements of the circular letter. These contracts have been kept confidential, not to withhold information from the stockholders but, for organization reasons, from the very officers and employees who share the benefits thereof. You will well appreciate why all of the organization should not know what is being done in this respect for the various members of it, just as in the case of salaries.

When the letter was issued there had been filed in the suit the form of these contracts, accompanied by affidavits which showed they embraced 53,938 shares sold at $30.00 per share. Therefore should the purchase price under these contracts be reduced from $30.00 to $10.00 per share (as I suggested,

but will not now occur) the difference to the Company would be $1,078,760, whereas the circular letter would have you erroneously believe there is involved to the Company the sum of $2,220,000 plus a large additional amount by reason of book value of shares.

It further appeared from the form of contract that the rights of the Company have been amply safeguarded. The contract required the payments to be made at the rate of $1.00 per share per quarter, with interest at 5% per annum, which made the period of the contract 7½ years. During that period the shares are placed in the name of an agent, designated by the Board of Directors for the purpose, who has all the voting powers and collects and applies to the purchase price all distributions on the stock. Notwithstanding full payment, the purchaser can secure no transfer within five years of the date of the contract, except in the event of his death and except that if he becomes 45 or more years of age the five-year period is reduced to three years.

I thought, and still think, that the authorization of such a change would be proper. These contracts were authorized because it was thought they would benefit the Company by interesting employees in it. As matters have turned out, these contracts are requiring the employees to purchase these shares at some $700,000. more than their present market value, which is a great burden to these employees, and therefore most detrimental to the Company.

However, when it was learned that some stockholders were not only objecting to such modifica-

tion but actually urging in a suit that the management was seeking to defraud the Company because the notice had not specifically stated that some of the contracts were held by Directors, the purchasers became unwilling to accept a modification, notwithstanding the circumstances I have set forth and although we had received proxies representing over a majority of the shares entitled to vote which made no such objection. I thereupon authorized our counsel to state, and for that reason he did state, to the Court, as I now state to you, that the proposed modification of these contracts was withdrawn from the meeting.

THE PURPOSE OF MESSRS. SCOTT & STRINGFELLOW

The real purpose of the suit seems to be an endeavor to have elected to the Board one or more representatives agreeable to Messrs. Scott & Stringfellow, so that it may secure advance and confidential information of the Company's affairs.

Practical confession of this motive has been made by Mr. Buford Scott, a member of that firm, in an affidavit filed by him in the suit. He denies that the suit is

> "actuated *solely* by a desire on our part for representation on the Board of Directors of the defendant corporation in order to obtain confidential and advance information about the business and affairs" of the Company.

But the acts of the firm are even more significant than these words. Some of its members appeared

Exhibit, Annexed to Supplemental Affidavit of H. Laurence Brooke

at the meeting on March 10th, 1931 with their counsel, Messrs. Anderson, Bocock and McCarter, and sought to prevent the election. Failing this, they nominated for Director Mr. James H. Scott, Jr., a young man closely identified with that firm who has had no experience in the tobacco business and is now being named as one of their proxies.

By an affirmative vote of over two-thirds, that is, of 1,333,022 shares out of 1,998,780 shares entitled to vote, there were re-elected as Directors Messrs. Benjamin L. Belt, David H. Ball, George H. Hummel, Everett Meyer, Alvah H. Shinkle, Earl J. Bush, William W. Drewry, James T. Keel, J. Strother Freeman, Harry A. Stout and E. Grayson Weymouth, whom the stockholders had many times so honored.

Notwithstanding this overwhelming vote, Messrs. Scott & Stringfellow are now seeking to upset this election in Court on such surprising grounds as the following: That the proxies ran to the President, Counsel and Secretary of the Company; that some of these proxies were from fiduciaries and general instead of special in form; that the inspectors of election were employees of the Company and were selected by the stockholders instead of by the Board; that the persons elected Directors were not shown to be bona fide stockholders of the Company.

Such proxies and inspectors had been used by the Company since its organization; I believe it to be the universal practice; certainly, such are the proxies that come to me from other corporations. These persons are but the temporary agents of the stockholders. The only inhibition on the right of

selection is that an inspector may not be a Director or candidate for that office.

The stock records produced at the meeting showed each person elected a Director to be a stockholder of the Company. And the New Jersey Statute provides that every fiduciary holding stock "may vote thereon as a stockholder" and that "stockholders may vote at all meetings by proxy in writing".

I am advised that these grounds are wholly without merit and that, for substantiation, I may refer the stockholders to the decisions of the New Jersey Courts in *Bache* v. *Central Leather Co.*, 78 N. J. Eq. 484; *Re Leslie,* 58 N. J. L. 609; *Re Cape May etc. Co.,* 51 N. J. L. 78; and *Re St. Lawrence Steamboat Co.,* 44 N. J. L. 529.

BONUS BY-LAW

Every bonus plan has two fundamentals, namely, ascertainment of the amount to be distributed and the distribution of the amount thus ascertained.

In March 1921 the stockholders adopted a bonus plan which (1) ascertained the "Net Profits" by deducting from gross income costs, taxes, expenses, losses, depreciation, interest, preferred dividends and 7% on the average amount represented by Common Stock and Surplus; (2) took 15% of such "Net Profits" as the amount to be distributed; and (3) distributed such amount among the officers and employees on the basis of their ownership of Common Stock for the year in question, with the limitation that such ownership could not exceed 3⅓%

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by the President, 2% by a Vice-President, 1% by certain other officers or heads of a department, and ½ of 1% by the other officers and employees of the average Common Stock outstanding. When the Common Stock was changed to shares without par value the by-law was amended to make the deduction $1.50 per share of Common Stock instead of 7% thereof.

The proposed amendment (1) decreases the amount of "Net Profits" to be distributed from 15% to 5% thereof, (2) eliminates in ascertaining "Net Profits" the deduction of $1.50 per share of Common Stock and 7% on the Surplus; and (3) increases the limit on ownership of shares to 7½% for the President, 5% for a Vice-President, 2½% for certain other officers or heads of a department and 1% for any other officer or employee, of the average Common Stock outstanding.

The *amount* of the bonus is affected only by (1) and (2) above. The reasons for these changes were thus stated in my letter accompanying the notice of the annual meeting:

> "The essential change consists in making the amount to be distributed 5% of the net profits applicable to dividends on the Common Stock instead of 15% of the net profits remaining after deducting 7% on the average amount represented by Common Stock and surplus. For the past several years the terms of this by-law have precluded any bonus distribution and this has proven quite a handicap in view of the bonus being paid by other companies. In this situation a division of such profits for bonus

purposes on a 5 to 95 basis between employees and common stockholders is suggested as neither unfair nor excessive."

The increase in the percentage of Common Shares which may be owned affects only the *division* of the amount of the bonus among those entitled to participate in them. These increases are suggested because the depreciation in the market value of the Common Stock of the Company has been such that the larger percentages of such shares can be purchased now for substantially the same amount of money that the smaller percentages of shares could be purchased for when the by-law was originally adopted, and there seems no good reason why officers and employees should not be attracted to invest as much money in the Common Stock of the Company in this manner as was the attraction formerly.

In the supplement you will find the present bonus by-law and the proposed amendment thereof; and you will understand that every Director is eligible to participate under them according to the number of Common Shares he may own and the classification in which he may fall.

Resolutions Authorizing Sale of Common Shares

On March 10th, 1925 the stockholders passed a resolution authorizing the Board of Directors to sell not exceeding 100,000 shares of Common Stock at not less than $30.00 per share to such employees, at such times, on such terms and in such amounts

as it might determine; and on September 7th, 1929 they passed a resolution giving the Board like powers for selling not exceeding 150,000 additional Common Shares at not less than $20.00 per share. These resolutions are printed in the supplement. The officers and Directors are employees of the Company and therefore eligible to purchase under them.

At the time these resolutions were passed the minimum price fixed was substantially less than the market price of the Common Stock. While some shares were sold at $30.00 under the first resolution, the employees have been unwilling to purchase at $20.00 per share. There was a continuation of the decrease in the market price which induced the establishment of the lower minimum price. The stock last Winter went below $9.00 per share.

This situation has totally deprived the organization in recent years of any benefit from the authority to sell Common Stock to them, and led me to think it wise and in the best interest of the stockholders to request a reduction in the minimum price to a figure consonant with the prevailing market price of the stock.

The proposed revision does not increase the number of shares that may be sold or modify any existing contract or change the powers of the Board under the resolutions. Indeed, such discretionary powers in the Board are now conferred by the Certificate of Incorporation, which authorizes shares of Common Stock to be sold "from time to time, for such consideration and upon such terms and conditions as from time to time may be fixed by the Board of Directors".

Exhibit, Annexed to Supplemental Affidavit of H. Laurence Brooke

All that the revision will accomplish is a reduction for the shares yet unsold under these resolutions of the minimum price to $10.00 per share from $30.00 per share in the first resolution and $20.00 per share in the second resolution. In this respect you are merely asked to waive your preemptive right in favor of selling these shares to officers and employees at not less than $10.00 per share instead of at $30.00 and $20.00 a share, respectively.

THE REAL ISSUE

The real issue is whether or not you will trust your investment in the Company to Messrs. Scott & Stringfellow or to the present management. The proxy which that firm asks you to send it goes much further than questions of bonus or sale of shares. It authorizes your shares to be voted with respect to the election of Directors and for the transaction of any other business that may properly come up in any general, special or adjourned meeting held within six months after you give it and any adjournment thereof. The execution of such a proxy would be placing your Company in the hands of that stock brokerage firm.

I cannot believe there is any such desire on the part of the great body of the stockholders. I therefore ask that you execute and return the form of proxy in the stamped addressed envelope enclosed for that purpose so that there may be no question of your wishes in this respect after the full expressions from that firm and myself. You will notice that the enclosed proxy runs to officers and

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employees of the Company and authorizes ratification of the election of Directors held March 10th, 1931.

It is my earnest belief that the proposed change in the bonus by-law and the proposed reduction of the minimum price in these resolutions are both things that should be done in the best interest of the stockholders.

Your Company is the smallest of the four large tobacco companies. It is endeavoring to build up its brand "OLD GOLD". Its future rests largely on that effort. It is meeting with tremendous competition. To carry this work on needs the very best organization that can be secured and one that feels it is appreciated by the stockholders whom it serves.

For some years the organization has received no bonus and has been unable to buy any shares of stock under the stock resolutions because the minimum price exceeded the market price of the shares. This is in striking contrast to our competitors, whose organizations have not only received large cash bonuses, but the organization of the very largest of them, by a vote of some 80% of its issued share capital, has been allowed to buy shares of its common stock at a price less than one-fourth of its then market price.

Respectfully yours,

B. L. BELT, *President.*

N. B. *You should execute and return the enclosed proxy although you may heretofore have given a proxy.*

Exhibit, Annexed to Supplemental Affidavit of H. Laurence Brooke

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P. LORILLARD COMPANY

119 West 40th Street

New York City.

OFFICE OF THE PRESIDENT.

March 25, 1931.

MR. FRED W. SCOTT,
Scott & Stringfellow,
Richmond, Virginia.

DEAR MR. SCOTT:

I have your letter of the 24th in which you undertake to answer my letter of the 20th to Mr. Buford Scott, who is your son and also a member of the firm of Scott & Stringfellow.

I see no need to rehearse what I said in my letter to Mr. Buford Scott. I might point out to you that I had only such assistance in the preparation of my letter as you had in the preparation of the proposed letter to the stockholders, concerning which I wrote, not to mention your letter to me under answer. I thought you might be harking back to a statement I made about a year ago with respect to "OLD GOLD" being then in black ink; hence it was that I took the pains to point out that your statement as to "OLD GOLD" being remunerative would not be true as of the date of your circular letter. I have no objection to any inferences the stockholders may draw from the real facts, nor have I any objection to stockholders desiring repre-

sentation on the board. But I do object to stockholders receiving statements such as were contained in your circular letter and to litigation such as you have brought following a refusal to put on the board one or more directors agreeable to you.

I am simply writing you to say that I wish very much you had seen fit heretofore to treat this situation with the courtesy you are now seeking to throw around it. I recall your first communication on the subject—your pen-and-ink letter to me from Florida. I remember very well your next communication—a telephone conversation of over an hour's duration, in the course of which I cordially invited you to come to the office or to lunch with me and talk things over, but you declined and persisted in your declaration that the meeting as called was entirely illegal and that you would have it held so unless I abandoned bringing before the meeting everything but the election of directors, although the notice and accompanying papers were then in the hands of the stockholders. In this phone conversation you went so far as to say that we had adopted a record date for determining the stockholders entitled to vote, instead of closing the books, for the sole purpose of influencing the stockholders in favor of the management; and refused to talk with Mr. Brooke, our Secretary and Assistant Counsel, when I asked you to let him explain this to you.

The next time I saw you was at the Hotel Plaza in New York City, at your request, the day after I had seen your counsel and your son, at their request, in Washington, D. C. Both of these meet-

New Jersey State Library

10 ings were an effort on my part to come to some amicable understanding. On this occasion you refused to see Mr. Brooke who accompanied me, although I had been willing to talk with your attorney in Washington, and I found that you were simply full of dire predictions as to what would happen to me if I did not accede to your full request of abandonment, as above stated, and did not in addition put on the board one or more representa-
20 tives agreeable to you.

Notwithstanding my reception at your hands, the following day I canvassed with my associates my conversations with you. When I informed you that we could not accede to your request there followed the present suit, which goes to the extent of alleging that the management is seeking resolutions which, if carried into effect, would constitute a fraud on the stockholders for their own personal benefit and which asks the Court to appoint its own
30 representative to conduct the stockholders' meeting and its own tellers to act at the election of directors.

I do not see that any person by words or act could have been more discourteous than the above record shows you to have been,—and to those whom you now profess to think have done great things for the company. In view of the intimate and friendly relations that had existed between us, I
40 say to you in all candor that I have been amazed at such a course of conduct on your part.

Yours very truly,

B. L. Belt, President.

Exhibit, Annexed to Supplemental Affidavit of H. Laurence Brooke

Resolution passed by the Stockholders March 10th, 1925:

"RESOLVED: That the Board of Directors of the Company be and it hereby is authorized to sell at not less than $30 per share, not exceeding 100,000 shares, of the authorized and unissued Common Stock of the Company to such employee or employees of the Company, at such time or times, on such term or terms, in such manner or manners and in such amount or amounts as may be determined by the said Board of Directors at any time or from time to time."

Resolution passed by the Stockholders September 7th, 1929:

"RESOLVED: That the Board of Directors of this Corporation be and it hereby is authorized to issue and sell at not less than $20 per share not exceeding 150,000 shares of Common Stock without nominal or par value out of the increased number of such shares this day authorized by the stockholders and unissued, to such employee or employees of the Corporation at such time or times on such term or terms in such manner or manners and in such amount or amounts as may be determined by said Board of Directors at any time or from time to time."

Exhibit, Annexed to Supplemental Affidavit of H. Laurence Brooke

PRESENT BONUS BY-LAW

SECTION 1. As soon as reasonably may be after the end of the calendar year 1921, and of each calendar year of the company's existence thereafter, and under and in accordance with all the terms of this article, the Treasurer of the Company shall ascertain the net profits of the Company for such year, and shall pay and distribute an amount of such net profits equal in the aggregate to fifteen per cent (15%) thereof to and among those officers and employees of the Company who have both been in the employ and owned Common Stock of the Company for the whole of such year as an extra dividend upon and in the proportion among such officers and employees of such shares of Common Stock thus owned by them respectively.

SECTION 2. For the purpose of this article of the By-Laws, the net profits of the Company for any year shall consist of the income and earnings of the Company in the operation and conduct of its businesses and affairs for such year after deducting therefrom all the taxes, costs, expenses and losses, such provisions as may be determined by the Board of Directors of the Company for depreciation and outstanding trade obligations and otherwise, and an additional amount equal in the aggregate to the 7% interest on its outstanding 7% Bonds, the 5% interest on its outstanding 5% Bonds, the 5½% interest on its outstanding 5½% Bonds, the 7% dividends on its issued 7% Preferred Stock, $1.50 per share on its average issued Common Stock without nominal or par value, and

Exhibit, Annexed to Supplemental Affidavit of H. Laurence Brooke

7% on its average surplus and undivided profits for such year, to which profits shall be added or from which profits shall be deducted, as the case may be, the Company's proportion (based on its stock holdings) of the net profits or losses for such year of its subsidiary Companies.

SECTION 3. Wherever used in this Article the word "owned" shall mean and be satisfied only by the entire registered, legal and beneficial ownership, but the mere pledging of shares as collateral security shall not be deemed to impair such ownership if otherwise existing, and Common Stock sold by the Company to any officer or employee shall be deemed so owned by such officer or employee so long as such officer or employee continues under contract to purchase the same from the Company notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee. To constitute a basis of participation for any year, the employment by the Company must exist for the whole of such year, except that should any officer or employee fail, for any reason, to be in the service of the Company for the whole of any year, such officer or employee, or the estate thereof, as the case may be, shall nevertheless participate in such payment and distribution for such year in the proportion that the duration of the employment of such officer or employee within such year bears to the whole of such year. To constitute a basis of participation with respect to any year, shares of said Common Stock must be owned by an officer or employee for the whole duration of the employment of the officer or

employee by the Company within such year, except that should an officer or employee of the Company purchase shares of said Common Stock during such year from an officer or employee of the Company or from the estate of such an officer or employee, such shares shall constitute a basis for participation by such purchaser in such payment and distribution for such year in the proportion that the period during which such shares are owned by the purchaser within such year bears to the whole of such year, if, disregarding the limitation hereinafter contained as to the number of shares upon and with respect to which an officer or employee may participate, such shares might otherwise have entitled the officer or employee who, or whose estate, is selling the same to participate upon and with respect thereto in such payment and distribution for such year. The president may not participate in any such payment and distribution upon or with respect to any shares of said Common Stock in excess of 3⅓% of the average issued Common Stock of the Company for such year, no vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 2% of the average issued Common Stock of the Company for such year, no secretary, treasurer, auditor, manager, superintendent, head of a department (such as leaf, law, sales, manufacture, traffic and the like) assistant to any of the foregoing, or assistant or secretary to the president or to any vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 1% of the average issued Common Stock of the

Company for such year, and no other officer or employee of the Company may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of ½ of 1% of the average issued Common Stock of the Company for such year; but the Board of Directors of the Company may at any time by resolution in writing add to said "1%" Class any officer or employee or group or class of officers or employees then in said "½ of 1%" Class. Anything in this Article to the contrary notwithstanding, any shares of said Common Stock so owned during the whole of the last six months of the calendar year 1921 shall be deemed to have been so owned for all the purposes of this article for the whole of the calendar year 1921.

SECTION 4. The acts and findings of the Treasurer in ascertaining the net profits for any such year and making payment and distribution of the 15% thereof shall be binding and conclusive on all parties, and no one claiming hereunder shall have a right to question the said acts and findings or to any examination of the books, papers or accounts of the Company, or to continue with the Company or any claim against the Company or against any officer, director or employee of the Company or any right or claim whatever except as herein specifically expressed. But nothing herein contained shall be construed to preclude the Company from correcting an error or preventing or undoing a fraud.

SECTION 5. This Article of the By-Laws may be amended or repealed only by the action of the stockholders of the Company and not by the Directors.

Exhibit, Annexed to Supplemental Affidavit of H. Laurence Brooke

PROPOSED AMENDMENT OF BONUS BY-LAW

RESOLVED: That Article XII of the By-Laws entitled "Bonus to Officers and Employees" be amended so as to read as follows:

"Section 1. As soon as reasonably may be after the end of the calendar year 1931, and of each calendar year of the Company's existence thereafter, and under and in accordance with all the terms of this Article, the Treasurer of the Company shall ascertain the net profits of the Company for such year, and shall pay and distribute an amount of such net profits equal in the aggregate to five per cent (5%) thereof to and among those officers and employees of the Company who have both been in the employ and owned Common Stock of the Company as hereinafter stated as an extra dividend upon and in the proportion among such officers and employees of such shares of Common Stock thus owned by them respectively.

"Section 2. For the purpose of this Article of the By-Laws, the net profits of the Company for any year shall consist of the income and earnings of the Company in the operation and conduct of its businesses and affairs for such year after deducting therefrom all the taxes, costs, expenses and losses, such provisions as may be determined by the Board of Directors of the Company for depreciation and outstanding trade obligations and otherwise, and an additional amount equal in the aggregate to

the 7% interest on its outstanding 7% Bonds, the 5% interest on its outstanding 5% Bonds, the 5½% interest on its outstanding 5½% Bonds and the 7% dividends on its issued 7% Preferred Stock, to which profits shall be added or from which profits shall be deducted, as the case may be, the Company's proportion (based on its stockholdings) of the net profits or losses for such year of its subsidiary Companies.

"Section 3. Wherever used in this Article the word 'owned' shall mean and be satisfied only by the entire registered, legal and beneficial ownership, but the mere pledging of shares as collateral security shall not be deemed to impair such ownership if otherwise existing, and Common Stock sold by the Company to any officer or employee shall be deemed so owned by such officer or employee so long as such officer or employee continues under contract to purchase the same from the Company notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee. To constitute a basis of participation for any year, the employment by the Company must exist for the whole of such year, except that should any officer or employee fail, for any reason, to be in the service of the Company for the whole of any year, such officer or employee, or the estate thereof, as the case may be, shall nevertheless participate in such payment and distribution for such year in the proportion that the duration of the employment of such officer or employee within such year bears to the whole of such

year. To constitute a basis of participation with respect of any year, shares of said Common Stock must be owned by an officer or employee for the whole duration of the employment of the officer or employee by the Company within such year, except that should an officer or employee of the Company purchase shares of said Common Stock during such year from an officer or employee of the Company or from the estate of such an officer or employee, such shares shall constitute a basis for participation by such purchaser in such payment and distribution for such year in the proportion that the period during which such shares are owned by the purchaser within such year bears to the whole of such year, if, disregarding the limitation hereinafter contained as to the number of shares upon and with respect to which an officer or employee may participate, such shares might otherwise have entitled the officer or employee who, or whose estate, is selling the same to participate upon and with respect thereto in such payment and distribution for such year. The president may not participate in any such payment and distribution upon or with respect to any shares of said Common Stock in excess of 7½% of the average issued Common Stock of the Company for such year, no vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 5% of the average issued Common Stock of the Company for such year, no secretary, treasurer, auditor, manager, superintendent, head of a department (such as leaf, law,

sales, manufacture, traffic and the like), assistant to any of the foregoing, or assistant or secretary to the president or to any vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 2½% of the average issued Common Stock of the Company for such year, and no other officer or employee of the Company may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 1% of the average issued Common Stock of the Company for such year; but the Board of Directors of the Company may at any time by resolution in writing add to said '2½%' Class any officer or employee or group or class of officers or employees then in said '1%' Class. Anything in this Article to the contrary notwithstanding, any shares of said Common Stock acquired by an officer or employee from the Company at any time in 1931 shall be deemed to have been owned by such officer or employee for all the purposes of this Article for the whole of the calendar year 1931 notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee.

"Section 4. The acts and findings of the Treasurer in ascertaining the net profits for any such year and making payment and distribution of the 5% thereof shall be binding and conclusive on all parties, and no one claiming hereunder shall have a right to question the said acts and findings or to any examination of the books, papers or accounts

of the Company, or to continue with the Company or any claim against the Company or against any officer, director or employee of the Company or any right or claim whatever except as herein specifically expressed. But nothing herein contained shall be construed to preclude the Company from correcting an error or preventing or undoing a fraud.

"Section 5. This Article of the By-Laws may be amended or repealed only by the action of the Stockholders of the Company and not by the Directors."

Reply Affidavit of Buford Scott for the Complainants.

Filed March 26, 1931

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

BUFORD SCOTT, being duly sworn on his oath, deposes and says:

1. I have read the affidavits of Benjamin L. Belt and the other affidavits thereunto annexed, all of which I am informed were served on complainants' solicitors on March 23, 1931.

2. I am advised that a large part of the said affidavit of Benjamin L. Belt and the other affidavits is argumentative, and contain inferences and conclusions which are not proper parts of an affidavit. Nevertheless, out of abundant caution and in order that those inferences and arguments having been placed before the Court in an affidavit may not go apparently undenied, I shall proceed to answer the most important of them, and correct certain misstatements of fact.

3. It is denied that the stockholders of the corporation were informed that those persons named as proxies were officers and employees of the corporation, as is set out in the said affidavit of Mr. Belt.

4. It is denied that, as alleged in the said affidavit of Mr. Belt, this action of myself and the other complainants in the cause before the Court

was actuated solely by a desire on our part for representation on the Board of Directors of the defendant corporation, in order to obtain confidential and advance information about the business and affairs of the said defendant. It is my opinion, however, that it would be proper for the Board of Directors of said corporation to include at least one member who is not an officer or employee of the company, particularly as in the present case the present officers and directors of the corporation have voted in favor of the issuance of stock to themselves, and have denied to inquiring stockholders any information as to the contracts thus made with themselves. In view of the situation now existing, it would seem not only proper for non-employee stockholders to have representation on the Board of Directors, but desirable and proper that a majority of said Board should be composed of persons who are not officers or employees of the corporation. It is not true that any of the members of the firm of Scott & Stringfellow seek a place on the Board of Directors. Personally, I would not accept it. My father, Mr. Frederic W. Scott, has, in my hearing, stated that he would not accept an election. Mr. James H. Scott, Jr., was nominated at the stockholders' meeting because we had no other person who was willing to act. He has since stated that he does not wish to be elected a director. We have approached other stockholding interests, not employees, and have suggested that they would make proper representatives on the Board, and that they seek election as such.

Reply Affidavit of Buford Scott for the Complainants

5. The facts with regard to the denial of the rights of complainants in the bill to examine the stock list prepared by the corporation for the meeting of March 10th have been fully set out in the bill of complaint and affidavits thereto attached.

6. It is stated in the affidavit of Mr. Belt that the procuring of proxies from the stockholders of the corporation by the management was done in the usual way and in accordance with the established practice of the defendant and other corporations. It is obviously true that it is usual for stockholders to execute proxies sent to them by the management of a corporation, and in the usual case, if there is no opposition to the policies of the management, this results in no harm. The objection of the complainants to the manner in which the proxies were obtained is that the management, including the persons named in the proxies to vote them, had a personal interest in the resolutions to be voted on at the stockholders' meeting and failed to disclose this personal interest and failed to inform stockholders of the particulars of this personal interest, and have repeatedly since refused, after numerous demands, and still do refuse, to disclose the particulars of their personal interest. In the affidavit of Mr. Belt, a form of proxy sent out by the American International Corporation is described, and it is pointed out that one of the proxies and agents named in said proxies is Mr. Frederic W. Scott, one of the complainants in the instant case, and it is further pointed out that the fact was not disclosed in the notice of said meeting that Mr. Scott was a director of the American

International Corporation, and would vote for himself as a director. No allegation is made that there was any action to come before said American International Corporation meeting in which Mr. Scott was personally interested, or that Mr. Scott had failed to disclose any personal interest in any proposed action by said corporation, nor that there was any objection on the part of any stockholder of said corporation to the policies of the management; nor is the fact pointed out that of the attorneys empowered to vote said proxies, numbering five, four were not employees of the corporation.

7. I am informed that a fiduciary cannot legally give a general proxy, and that the fact that such proxies may have been voted at prior meetings of the corporation cannot make the voting of said proxies valid at the meeting under consideration. In the affidavit of Mr. Brooke, the Chairman of said meeting, it is stated that there were voted proxies for some 80,000 shares held by fiduciaries and voted under proxies general in form. I am informed that at said meeting, at which I was present, there were voted proxies in the names of attorneys in fact, where no power or authority was filed; that proxies were voted which did not correspond to the names as shown on the stock books of the company; that proxies were executed in the name of corporations without the signature of any officer of the corporation; that proxies were executed in the names of Trustees and other fiduciaries, without showing any authority for the execution; that proxies were voted in the name of estates of persons deceased; that proxies were

voted notwithstanding the fact that proxies later in date had been executed in favor of the complainants. No substantial opportunity was given to myself, my associates or our counsel to examine the proxies to determine their validity, and absolutely no opportunity was given to us or our counsel to protest against the voting of any proxy. This opportunity to examine the proxies and to protest to the tellers of the meeting against their use was demanded from time to time throughout the meeting. Mr. Belt states in his letter attached to his said affidavit (Exhibit 9) that we had this opportunity throughout the meeting, which lasted from 11:00 A. M. to 5:45 P. M. Mr. Belt was not present at the meeting, and his statement is inaccurate and untrue in that no proper opportunity was given for said examination, and the only opportunity was given by placing a satchel full of proxies on the table at some time after 2:00 P. M. and these were removed and turned over to the inspectors of election at about 3:30 P. M.

8. It is denied, as stated in the affidavit of Mr. Belt, that the stockholders know that all of the directors of the defendant would be eligible to participate in the benefits of the proposed amendment of the bonus by-law, or under the present by-law. It is also denied, as stated in the affidavit of Mr. Belt, that the directors of the corporation would have no discretion whatever under the proposed amendment of the bonus by-law, and, on the other hand, it is obvious that the distribution of the bonus, which depends on the amount of common stock of the corporation held by the recipient, and

as the directors would have the right in their discretion, and with certain limitations to apportion the stock to be issued among the employees of the corporation, including themselves, they could thus, in a large measure, control the amount of the bonus to be paid to the individual employees. This is also true of the stock which has been issued in the past to employees, about which information has been continually demanded of the management, and consistently refused.

9. Mention is made in the affidavit of Mr. Belt that several of the complainants voted in favor of the resolution of September 7, 1929, authorizing the sale of 150,000 shares of common stock to employees of the company, at $20 per share. Neither I, nor my associates have any objection to liberally rewarding the officers and employees of the corporation for services rendered in building up the good will of the corporation, and we are now prepared to consider any proper resolutions to this effect when we are given the information necessary to an intelligent consideration of the subject, and when we are informed as to what disposition has been made in the past of stock issued to officers and employees.

10. It is stated in the affidavit of Mr. Belt that the history of the action of the Board of Directors under the authority conferred by prior resolutions to sell stock to employees is a complete refutation of these allegations of unfairness, but no such history is disclosed in Mr. Belt's affidavit, and it is this history of the action of the Board of Directors

which is being sought by myself and my associates, and is being denied us. A copy of a form of contract is attached to the said affidavit, marked Exhibit 6, which is the first information I, or my associates have had as to said form, but still no proper disclosure is made of the acts of the directors, particularly in the distribution of this stock to themselves as employees.

11. In dealing with the proposal to cancel the contracts already made for the sale to employees of the stock of the corporation, it is stated in the affidavit of Mr. Belt, that the facts with respect to said contracts would be available at the stockholders' meeting. At the meeting of the stockholders, held on March 10, 1931, this information was demanded by me and my associates, and by several other stockholders present at said meeting, with whom the complainants in the bill of complaint in this case have no connection whatever, but the information was refused.

12. It is again denied, as alleged in said affidavit of Mr. Belt, that Mr. H. Laurence Brooke, as agent for the shares of stock standing in his name, which said stock was sold to employees, has any right to vote said stock on matters in which the management of the corporation may be interested, at the expense of non-employee stockholders.

13. I cannot say, without the information continually demanded, that the proposed change in the bonus by-law would be either beneficial or detrimental to the best interests of the corporation.

Reply Affidavit of Buford Scott for the Complainants

14. Attached to the affidavit of Mr. Belt, as Exhibit 9, is a copy of a letter to me from him dated March 20, 1931. In this letter, it is stated that the present market price of the stock of the company is $20 per share, and I am called on to state to the stockholders to what extent I and those associated with me, directly or indirectly, contributed to the recent advance in the price of the stock, the intimation being that I and my associates had deliberately caused the price of the stock to advance. This suggestion is without the slightest basis in fact, and neither I, nor any of my associates nor, to the best of my knowledge and belief, any complainant in the bill of complaint, has purchased a single share of this stock since receipt of Mr. Belt's letter of February 14, 1931, and the call for the annual meeting, for the reason that I am of the opinion that the statements contained in the letter of Mr. Belt are not such as to encourage any stockholder to increase his holdings of stock in this corporation, and the actions of Mr. Belt and those associated with him in the managment of the corporation since the said letter and call were sent out have been such as to seriously discourage the acquisition of any additional interest, particularly in view of the threat contained in the following language of said letter of Mr. Belt to me:

> "But you can quote me as saying that there will be no possibility of any such desirable end being reached if the other stockholders manifest toward the organization the spirit that is being manifested by those who are behind the suit and the circular letter."

This language was used in conjunction with the forecast in the Scott & Stringfellow proposed circular, which is attached to Mr. Belt's affidavit, of the potential value of the Lorillard brands. It was also stated in the circular letter that we were informed that the Old Gold brand is now remunerative. In the letter of Mr. Belt he denies this fact as of that date and complains that I do not give the source of my information. The source of my information is Mr. Belt, and our circular letter has been changed so that it now reads:

> "We were informed in 1930 that this brand was remunerative."

15. Attached hereto, as Exhibit A, is a copy of a letter written to Mr. Belt by my father, Mr. Frederic W. Scott, dated March 24, 1931, in answer to his letter to me heretofore mentioned. There is also attached hereto, as Exhibit B, a revised form of the circular letter proposed to be sent out by Messrs. Scott & Stringfellow, which has been changed to meet certain of the objections enumerated by Mr. Belt to the first draft.

BUFORD SCOTT.

Subscribed and sworn to before me
this 26th day of March, 1931.

LEAH M. BAILEY,
Notary Public of New Jersey.

EXHIBIT A, ANNEXED TO REPLY
AFFIDAVIT OF BUFORD SCOTT

March 24, 1931.

Mr. B. L. Belt, President,
P. Lorillard Company,
119 West 40th Street,
New York, N. Y.

Dear Mr. Belt:

Your letter of the 20th addressed to my son and thanking him for the courtesy in submitting for your scrutiny the proposed circular letter to the stockholders, has been read by me with regret and surprise that you did not feel your obligation to express to him your views with the same courtesy which you appreciated in his communication.

During the years in which we have been stockholders of the Lorillard Company you and I have had many personal conferences in which we have not only discussed the affairs of the company but many matters of a purely personal character. You have stated that while I was not a member of the board of directors you would speak to me as freely as if I occupied a position on your Executive Committee, and have often expressed to me your appreciation of my support and cooperation. You have gone so far as to give me your confidence as to personal matters of an intimate character and to discuss potentialities of the Lorillard Company with great freedom. Regardles of your present or future attitude you may be assured that this confidence will always be respected. It was, therefore, to me a source of great surprise when the present situation arose, that you refused to give me infor-

mation as to the existing contracts with respect to the purchase of stock by officers and employees, as to existing bonus plans, or other affairs of the company, although at that time there was no suggestion or thought of litigation on the subject.

Notwithstanding this attitude, which was consistently maintained in personal conferences sought by us before any litigation was instituted, and our inability to secure information as to these matters from you or the officers of the company, I felt in keeping with the friendly feeling which I have always had for you personally and for the management, that before we sent out a circular letter to the stockholders I would desire to submit it to you to see that there were no erroneous statements contained therein. Your reply is couched in such language that I am constrained to feel that it was not wholly written by you, but that you were aided by someone who has not been familiar with our relationship in the past and is not in sympathy with the spirit which I should like to see actuate that relationship in the present and in the future.

You object to certain inferences which you claim might be drawn from the circular letter to the stockholders as prepared by us. We, cannot, of course, avoid such inferences, but there is certainly no disposition to make any statement which might be construed as unjust or prejudicial to the management of the company. I am sure that upon consideration you will agree that any stockholder has the right at any time to communicate with his fellow stockholders in any corporation and to seek their cooperation as to any matter which he deems of

mutual interest as affecting their comon ownership. This is what we have undertaken to do.

You complain of the statement contained in the letter as to the voting of the proxies given to the management at the meeting held on March 10, 1931. I happened to be present at that meeting, while you were not. Your information is therefore, based upon what others may have told you. No opportunity was given to any stockholder other than the management, to check the proxies until they had been fully checked by the assistants to the chairman, who was the Secretary of the company, after which they were placed on the table and voted within one hour from the time they were placed there, without any adequate opportunity for examination. Our counsel did specifically call attention to certain proxies which it was claimed were improperly signed, or general proxies signed by fiduciaries which were beyond their authority, and asked for a ruling, first, of the Chairman, and then of the inspectors of election, as to the voting of these proxies. The Chairman interrupted the statement to say that they would be voted and the inspectors of the election, who were employees of the company, refused to rule at all. The proxies were then taken out and voted without any adequate opportunity to other stockholders, including ourselves, to examine them fully and after the Chairman and the inspectors had refused to consider any protest as to their validity. The statement contained in our circular letter to the stockholders on this subject is correct.

The statement contained in your letter that it would be lacking in fairness if we did not tell the

stockholders the extent to which our firm and those associated with us in this opposition directed or contributed to the recent advance in the price of stock, might be deemed offensive, but I do not chose to take it in that sense. I prefer to answer you frankly by saying that neither our firm nor anyone associated with us has had anything to do with the recent advance in the market price of the stock. The suggestion in your letter is without the slightest basis in fact. I have been gratified that the public was beginning to realize the results of your very industrious and laborious efforts to create a volume of business for your company which has resulted in recovery of the income, and would seem to justify public confidence in the stock as an investment. I had hoped that the increase in the market price was due to these causes.

You ask if we would vote proxies obtained by us for or against the proposed amendment of the bonus by-law. We have asked for proxies giving us authority to exercise intelligent discretion at the time that the meeting is held. In view of the fact that the management has consistently refused to give us information as to the affairs of the company, it would not be proper for us to answer in advance how we would vote these proxies, when at a meeting of the stockholders we hope additional information will be furnished. I repeat what is stated in our circular letter, that we favor liberal provision for officers and employees of the company, but in view of the fact that all of the directors are officers and employees and would be beneficiaries of any stock or bonus plan if adopted, we feel that before

the stockholders are asked to vote or to say how they will vote as to any proposed stock or bonus plan they should be furnished full and detailed information as to the present status and as to any plan so proposed. This information when requested by us in personal conferences before any litigation was started, and since requested by other stockholders at the present meeting on March 10, 1931, has been consistently refused. Until adequate information is given to enable the stockholders to act intelligently and with justice both to their own interests and to those of the officers and employees, I do not think any stockholder can say how he will vote his own stock or that represented by proxies given him.

You seem to object to the suggestion that the stockholders be given representation on the board. In view of the fact that all of the members of the board are either officers or employees of the company, and information as to the affairs of the company is refused by them, it does not seem unreasonable for stockholders to desire or to seek to obtain representation on a board charged with the management of their property.

In the third paragraph of the second page of your letter you state:

"Your circular letter, referring to the brand 'Old Gold' states 'we are informed that this brand is now remunerative.' You do not give the source of information. Your circular letter would make the stockholders believe your statement true as of its date. I cannot, even by silence, sanction any such statement."

Exhibit A, Annexed to Reply Affidavit of Buford Scott

Our information on this subject was obtained from the highest source, the chief executive of the company, your own self, said that the Old Gold was no longer in the "red" but had become remunerative. You also told my son, Buford, the same thing. Therefore, we felt justified in making this statement to the stockholders and felt more strongly fortified because of the increased sales of this brand since you made the statement to us.

I find myself quite unable to appreciate the attitude taken by the officers of the corporation in connection with this matter. I have frequently expresed to you my appreciation of your efforts to build up the business of the P. Lorillard Company, and have earnestly cooperated in all of your undertakings to that end. I expresed, and we now express in the circular letter to the stockholders, our desire to see the officers and employees who have developed the company to the present point treated with liberality consistent with due regard for the rights of the owners of the property. It seems to me that the stockholders as owners are entitled to full and detailed information as to the affairs of their company whenever that information is requested. Especially is this true when the matter as to which information is sought is one with respect to which the officers and employees have a personal interest adverse to that of the stockholders. So long as the attitude is maintained of refusing to give this information, the stockholders of the company are forced to take action to protect their rights in relation thereto. In doing this I beg to assure you that there is no feeling of personal animosity to your-

self, no desire to do anything prejudicial to you or your management or to the interest of the company, but merely to exercise in a matter of business our rights as stockholders to protect what we conceive to be our rights and interests.

Very truly yours,

FWS:C

P. S. Our letter to the stockholders has been completed and is now ready to be mailed. We, however, in further deference to your wishes, have made changes in it conforming to your requests.

EXHIBIT B, ANNEXED TO REPLY AFFIDAVIT OF BUFORD SCOTT

SCOTT & STRINGFELLOW

Bankers & Brokers

FREDERIC WM. SCOTT
BUFORD SCOTT
WALTER S. ROBERTSON
EDWARD C. ANDERSON

MEMBERS
NEW YORK STOCK EXCHANGE
NEW YORK CURB MARKET (ASSOCIATE)
RICHMOND STOCK EXCHANGE
CABLE ADDRESS: SCOTTS

RICHMOND, VA.

March 28, 1931.

To the Stockholders of the
P. LORILLARD COMPANY:

By resolution of March 10, 1925, the stockholders of this company authorized the sale of 100,000 shares of common stock to officers and employees at $30 a share, which was more than the book value and less than the then market price. On September 7, 1929, the sale was authorized of an additional 150,000 shares to officers and employees at $20 a share, which was slightly in excess of the book value and below the then market price.*

We understand that none of the 150,000 shares last mentioned was purchased; that of the 100,000 shares authorized to be sold in March, 1925, at $30 a share, officers and employees purchased approximately 74,000 shares. We are not advised as to the persons by whom these purchases were made, the terms thereof, or the amounts, if any, paid on account of such purchases.

In the notice of the annual meeting to be held on March 10, 1931, and in the letter of the President accompanying that notice, you were informed that it was proposed to ask your approval at that

meeting of a plan to cancel the authority to sell 100,000 shares of stock at $30 and the contracts of purchase made thereunder, and also to cancel the authority to sell 150,000 shares at $20 a share, and in lieu thereof to sell to officers and employees 250,000 shares at not less than $10 a share, which price is less than 50 per cent of the present book value of the stock and materially below the price at which it is now selling in the market.

The effect of the proposed plan, if approved in the form sent out to stockholders, would be to cancel existing contracts under which there has been paid, or is due to the company approximately $2,220,000 not including interest; and in addition thereto to authorize the directors to sell to officers and employees including themselves 250,000 shares of the stock of the company at approximately $2,750,000 less than its present book value.

When notice of this plan was received we sought from the officers of the company, both by correspondence and personal conference, information as to the terms and status of existing contracts for the purchase of stock heretofore authorized to be sold and the amounts paid thereunder, as well as pertinent information with respect to the operation of the proposed plan. This information was at all times refused.

Being advised that it was the purpose of the management to put through the plan at the annual meeting regardless of the objection of independent stockholders and without furnishing the necessary information to enable the stockholders to act intelligently thereon, we applied to a Vice Chancellor of New Jersey for an injunction to restrain the holding of the meeting and the approval of the plan.

Exhibit B, Annexed to Reply Affidavit of Buford Scott

A restraining order was granted with order to show cause why the injunction should not be granted as prayed. On March 9th counsel for the company moved to have the order vacated and the motion was denied except to the extent that the order was modified to permit the election of a board of directors at the annual meeting and the adjournment thereof to April 21, 1931. Counsel for the company at this hearing admitted that the notice to stockholders had been insufficient to legalize action for the cancellation of present stock purchase contracts at this meeting and stated that an injunction as to this feature would not be opposed. Had we not taken legal action it is obvious that the management intended to carry out a plan which, when challenged, counsel admitted could not have been properly acted upon.

The meeting was held on March 10, 1931, subject to the limitations of this order. Neither the President nor any of the five Vice-Presidents attended. The President designated the Secretary as the Chairman of the meeting and two employees were chosen to act as inspectors of election. A large number of independent stockholders attended, representing about 240,000 shares of stock.

No report was made of the company's condition or prospects. Inquiries by stockholders as to the affairs of the company were not answered. A bag was presented, said to contain proxies in favor of the Secretary and Chairman of the meeting, for about 1,250,000 shares, and opportunity to check or count these proxies or to have their validity passed upon was denied. A casual inspection showed that many of them were improperly executed or otherwise defective, but all protests against the voting of such

proxies were ignored. The existing board of directors, all of whom were officers and employees of the company, were re-elected by the votes cast by the management. Our nominee, Mr. James H. Scott, Jr., received the votes of all stockholders present in person, so far as we could judge. The meeting was then adjourned to be held at 15 Exchange Place, Jersey City, N. J., on April 21, 1931, at 11 o'clock A. M. By further order of the court the meeting scheduled for April 21st will again adjourn, without taking any action, till May 5th at the same place and hour.

The P. Lorillard Company is in excellent financial condition. On December 31, 1930, it had a cash balance of nearly $17,000,000 and other current assets aggregating about $55,500,000; and owned real estate and machinery worth from $10,000,000 to $12,000,000. Its current liabilities were less than $1,500,000. For the year 1930, after paying interest on bonds, there was left for preferred and common stockholders about $3,600,000. During the past five years there has been created the "Old Gold" brand of cigarettes, the cost of which has been charged to current earnings and no part thereof has been capitalized. We were informed in 1930 that this brand was remunerative.

In these circumstances we favor liberal provision for the officers and employees of the company. We do not feel, however, that the proposed plan is just or equitable. It certainly should not be approved and the existing contracts cancelled without definite information as to the terms and present status of these contracts and as to the operation of the proposed plan and who are to be the beneficiaries

thereof. This is especially true where all of the directors are officers and employees who would benefit by the proposed plan, and who refuse to give to the stockholders any information either at the meeting of the stockholders or otherwise.

If you concur in this view and cannot attend the adjourned annual meeting, we shall be pleased if you will sign and return to us the enclosed proxy to the end that your stock may be represented and voted upon this matter, which we deem of vital interest to the company and its stockholders.

Very respectfully,

SCOTT & STRINGFELLOW.

HENRY W. ANDERSON,
Hunton, Williams, Anderson & Gay,
Richmond, Va.

JOHN H. BOCOCK,
McGuire, Riely & Eggleston,
Richmond, Va.

ROBERT H. MCCARTER,
McCarter & English,
Newark, N. J.
Counsel.

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* The lowest the Common Stock sold in 1925 was 30¼, the highest 39¾.
The lowest the Common Stock sold in 1926 was 27¾, the highest 42¼.
The lowest the Common Stock sold in 1927 was 24½, the highest 47⅜.
The lowest the Common Stock sold in 1928 was 23¾, the highest 46⅞.
The lowest the Common Stock sold in 1929 was 14¼, the highest 31½.
The lowest the Common Stock sold in 1930 was 8¾, the highest 28⅛.
The lowest the Common Stock sold in 1931 was 11⅜, the highest 20⅞.

Exhibit B, Annexed to Reply Affidavit of Buford Scott

STATEMENT OF ASSETS OF THE P. LORILLARD COMPANY

December 31, 1930, the P. Lorillard Company had on hand:

Cash amounting to		$16,980,000
Leaf Tobacco valued at		48,350,000
Other Current Assets of		7,200,000
Making Total Current Assets of		$72,530,000
There was due by the Company for current accounts	$ 510,000	
Accrued interest on bonds and dividends payable on the Preferred stock amounted to	960,000	
Making Total Current Liabilities of		1,470,000
Leaving Net Working Capital of		$71,060,000
The Company had real estate, machinery and fixtures carried on the books at	$13,600,000	
Less Reserves against these items and "advertising, taxes, etc." of	3,240,000	10,360,000

Exhibit B, Annexed to Reply Affidavit of Buford Scott

The Company had other assets representing principally investments in other companies, the value of which we are unable to determine, carried at	3,920,000	
Making the total assets	$85,340,000	
The Company had outstanding bonds amounting to	33,680,000	
Resulting in Net Assets for the stockholders of	$51,660,000	
There were 113,076 shares of Preferred Stock (Par $100)	11,307,600	
Leaving assets applicable to the Common Stock of	$40,352,400	
Equivalent to $21.10 per share on the 1,909,000 shares of Common Stock outstanding.		

In addition to the above, the Company has valuable brands, trademarks and good will, created during a period of 171 years, in the development of which many millions of dollars have been spent in advertising and which the Company carries at $21,268,000, equivalent to $11.10 per share of common stock, making a total value for the common stock, including this item, of $32.20 per share.

The above figures are taken from the treasurer's statement which is not certified by an outside agency.

Exhibit B, Annexed to Reply Affidavit of Buford Scott

To illustrate the potential value of Lorillard brands, we give below the present value of brands of other large companies:

The brands and good will of the American Tobacco Company are selling in the open market (with the stock at $120 per share) for	$407,000,000
The brands and good will of the R. J. Reynolds Tobacco Company are selling (with the "B" stock at $50 per share) for	367,000,000
The brands and good will of the Liggett & Myers Tobacco Company are selling (with the stock at $90 per share) for	176,000,000
	$950,000,000

The present market price of $20 for Lorillard not only places no value whatever on the brands and good will of this Company, but the aggregate market price of the stock is $2,000,000 less than the value of the Company's tangible assets.

March 26, 1931.

Reply Affidavit of Benjamin L. Belt for the Defendant.

Filed March 30, 1931

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

BENJAMIN L. BELT, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the same Benjamin L. Belt that made an affidavit in this cause, which was served on the complainants on the 23rd day of March, 1931, and to which I attached as an exhibit a letter from me to Mr. Buford Scott dated the 20th day of March, 1931.

Since the making of such affidavit I received from Mr. Fred W. Scott, senior member of the firm of Scott & Stringfellow, a letter a copy of which is attached to the affidavit of Mr. Buford Scott in the above entitled cause, served on the defendant on the 28th day of March, 1931; and I replied to such letter in a letter of which the following is a true copy:

"March 25, 1931.

Mr. Fred W. Scott,
Scott & Stringfellow,
Richmond, Virginia.

Dear Mr. Scott:

I have your letter of the 24th in which you undertake to answer my letter of the 20th to Mr. Buford Scott, who is your son and also a member of the firm of Scott & Stringfellow.

Reply Affidavit of Benjamin L. Belt for the Defendant

I see no need to rehearse what I said in my letter to Mr. Buford Scott. I might point out to you that I had only such assistance in the preparation of my letter as you had in the preparation of the proposed letter to the stockholders, concerning which I wrote, not to mention your letter to me under answer. I thought you might be harking back to a statement I made about a year ago with respect to 'Old Gold' being then in black ink; hence it was that I took the pains to point out that your statement as to 'Old Gold' being remunerative would not be true as of the date of your circular letter. I have no objection to any inferences the stockholders may draw from the real facts, nor have I any objection to stockholders desiring representation on the board. But I do object to stockholders receiving statements such as were contained in your circular letter and to litigation such as you have brought following a refusal to put on the board one or more directors agreeable to you.

I am simply writing you to say that I wish very much you had seen fit heretofore to treat this situation with the courtesy you are now seeking to throw around it. I recall your first communication on the subject—your pen-and-ink letter to me from Florida. I remember very well your next communication—a telephone conversation of over an hour's duration, in the course of which I cordially invited you to come to the office or to lunch with me and talk things over, but you declined and persisted in your declaration that the meeting as

called was entirely illegal and that you would have it held so unless I abandoned bringing before the meeting everything but the election of directors, although the notice and accompanying papers were then in the hands of the stockholders. In this phone conversation you went so far as to say that we had adopted a record date for determining the stockholders entitled to vote, instead of closing the books, for the sole purpose of influencing the stockholders in favor of the management; and refused to talk with Mr. Brooke, our Secretary and Assistant Counsel, when I asked you to let him explain this to you.

The next time I saw you was at the Hotel Plaza in New York City, at your request, the day after I had seen your counsel and your son, at their request, in Washington, D. C. Both of these meetings were an effort on my part to come to some amicable understanding. On this occasion you refused to see Mr. Brooke who accompanied me, although I had been willing to talk with your attorney in Washington, and I found that you were simply full of dire predictions as to what would happen to me if I did not accede to your full request of abandonment, as above stated, and did not in addition put on the board one or more representatives agreeable to you.

Notwithstanding my reception at your hands, the following day I canvassed with my associates my conversations with you. When I informed you that we could not accede to your request there followed the present suit,

which goes to the extent of alleging that the management is seeking resolutions which, if carried into effect, would constitute a fraud on the stockholders for their own personal benefit and which asks the Court to appoint its own representative to conduct the stockholders' meeting and its own tellers to act at the election of directors.

I do not see that any person by words or act could have been more discourteous than the above record shows you to have been,—and to those whom you now profess to think have done great things for the company. In view of the intimate and friendly relations that had existed between us, I say to you in all candor that I have been amazed at such a course of conduct on your part.

Yours very truly,

(Signed) B. L. BELT

B. L. BELT,
President."

There is being delivered through the mail this morning a circular letter from Messrs. Scott & Stringfellow to the stockholders of P. Lorillard Company dated March 28, 1931, which is identical with the draft thereof attached as an exhibit to the aforesaid affidavit of Mr. Buford Scott. It would seem to me that this circularization of the stockholders should have awaited the future order of the Court, unless complainants have concluded

that the Court should not sustain their attempt to enjoin the further holding of the stockholders' meeting.

BENJAMIN L. BELT.

Subscribed and sworn to in the City of New York, County and State of New York, before me, a Notary Public in and for the said County and State of New York, this 30th day of March, 1931, as witness my notarial seal.

E. F. MAJER,
Notary Public, Westchester County.
Certificate filed in New York Co.
Clerk's No. 1193, Reg. No. 1M791.
My commission expires March 30, 1931.

[NOTARIAL SEAL]

Notice.

Filed March 28, 1931

Sirs:

TAKE NOTICE, that on Monday, the 30th day of March, 1931, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, we shall move the Chancellor at the Chancery Chambers in the City of Jersey City for leave to file an addition by way of supplement in the above cause, a true copy of which is hereunto annexed and served on you herewith;

AND TAKE FURTHER NOTICE, that we shall then and there move the Chancellor for an order in accordance with the prayer of the said addition by way of supplement, and for an order declaring void the election of directors purported to have been held at the purported meeting of the defendant P. Lorillard Company on the 10th day of March, 1931; and in the event that the Court do not permanently enjoin the holding of the adjourned meeting, directing that the said meeting be held under the supervision of and conducted by a Master appointed by this Court, with all the powers prayed for in the said addition by way of supplement; and on the said application we shall read the affidavits and exhibits hereunto annexed, which rely upon the affidavits and exhibits annexed to the original bill of complaint, and upon the answering affidavits of

Notice

the defendant company served on us the 23rd day of March, 1931.

Yours respectfully,

McCarter & English,
Solicitors for Complainants.

To:
Messrs. Pitney, Hardin & Skinner,
Solicitors of defendant
P. Lorillard Company.

Addition by Way of Supplement.

Filed March 30, 1931

To his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainants in the above entitled cause further respectfully show unto your Honor:

1: Since the filing of the bill of complaint and the commencement of this cause a meeting of the stockholders of the defendant P. Lorillard Company assembled on the 10th day of March, 1931, at the registered office of the defendant, 15 Exchange Place, in the City of Jersey City, in the County of Hudson and State of New Jersey.

2: Pursuant to the order made upon filing the original bill in this cause as modified by the order modifying the same made herein on the 9th day of March, 1931, the only corporate action permitted at the said meeting was the election of directors to hold office for the ensuing year or until their successors should be elected and qualified.

3: The said meeting purported to organize and to proceed with the said election of directors; and at the said meeting a purported election was held and the said directors were attempted and purported to be elected thereat, and were stated by the chairman of the said meeting, Mr. H. Laurence Brooke, to have been elected as directors of the said defendant, to hold office for the ensuing year or until their successors should be elected and quali-

fied. The names of the directors so purported and attempted to have been elected and so announced to have been elected are: Mr. Benjamin L. Belt, David H. Ball, Earl J. Bush, William W. Drewry, J. Strother Freeman, George H. Hummel, James T. Keel, Everett Meyer, Alva H. Shinkle, Harry A. Stout and E. Grayson Weymouth.

4: The said meeting was conducted in an unlawful and irregular manner, and the purported election of the said directors is unlawful and void. The particulars of all of the said irregularities and unlawfulness are hereinafter set forth:

a: The chairman of the meeting counted in computing the quorum for the meeting proxies purporting to be from various stockholders and running to Messrs. Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, or any or either of them, or to their substitutes, without first having the validity of the said proxies passed upon by inspectors of election appointed by the directors pursuant to Art. II, Section VIII of the respondent's by-laws.

b: The chairman of the meeting counted the said proxies and declared a quorum to be present without having given the petitioners or their proxies an opportunity to examine and check the proxies running to the said Benjamin L. Belt, William R. Perkins and H. Laurence Brooke (hereinafter sometimes referred to as the proxies to the management), because included among the proxies to the management and constituting a very large part thereof were proxies signed by persons other than

the stockholders of record on the record date, and without sufficient evidence of such person other than such stockholder of record having authority to execute the said proxy for the stockholder of record; and there was included among the said proxies proxies general in form purporting to be executed by fiduciaries, and also because each of the proxies to the management is given or purported to be given to persons who are officers or employees of the respondent company, and are or would be beneficiaries of the plan and bonus by-law proposed to be voted upon at the said meeting.

c: The said meeting proceeded to elect as inspectors of election E. C. Hunter and W. J. Halley, who were not qualified to act as inspectors of election, in that they were and are officers and employees of the defendant P. Lorillard Company, namely, assistant auditor and assistant to the comptroller respectively, and as such are beneficiaries of the proposed plan of bonus and stock distribution, action on which would come before the said meeting, for which reason the said inspectors were interested in the votes which they were to count and were for that reason not impartial and were disqualified.

d: Because the said inspectors of election were elected by using the votes of the above-mentioned proxies to the management, which proxies were illegal for the reasons hereinabove stated.

e: The meeting proceeded to the election of directors and the inspectors of election refused to

permit the petitioners and/or their proxies and/or their counsel present at the meeting to challenge any of the proxies to the management or to pass upon and act upon challenges of certain of the proxies to the management interposed by or on behalf of your petitioners.

f: The petitioners were not given a proper opportunity by themselves or by their proxies or counsel present at the meeting to examine the proxies to the management.

g: Because the inspectors of election in counting the votes in favor of the gentlemen declared elected at the meeting as directors of the respondent company counted as voting in favor of the said gentlemen proxies to the management which were in whole and in part illegal and improper and invalid for the reasons hereinabove stated.

h: Because no full and proper information was or has been given to the stockholders of the said defendant company, either as to the present contracts for purchase of stock between the company and its officers and employees or their participation in the bonus, or as to what is supposed to be done in any plan suggested in the notice of meeting and proxies to enable the stockholders to consider the same intelligently, or to enable the stockholders to consider the fact that the persons to be elected directors might benefit by the proposed bonus by-law and plan of stock sale and plan to cancel existing stock sale contracts, or to act thereon, or to make valid any proxy given by stockholders to officers

and employees of the company to vote upon such plan, or upon any matter coming before this meeting in the circumstances stated; and therefore the proxies are void and incapable of being validly voted at the said meeting.

5: Upon the announcement of the election of the gentlemen hereinabove named as directors of the said defendant company, the said purported stockholders' meeting adjourned to meet on the 5th day of May, 1931, on which last mentioned day the said meeting will reconvene and will proceed unless restrained by this honorable Court, to consider and pass upon the proposed revision of Art. XII of the by-laws of the said defendant company entitled "Bonus to Officers and Employees," the proposed revision of the authority previously attempted to be given to its directors to sell to its employees shares of the common stock of the said respondent company and to cancel the existing stock purchase contracts with employees.

6: In acting upon the said last mentioned matters at the adjournment of the said purported meeting the defendant will commit and permit each and all of the several irregularities hereinabove complained of at the purported meeting held on the 10th day of March, 1931, and in particular, but without limitation of the foregoing, will not permit the complainants, their proxies or solicitors to have a sufficient or adequate opportunity to check the proxies to the management, the same inspectors of election will count the votes upon the resolutions to be proposed on the said matters and to be considered and voted upon as hereinabove stated, the said

inspectors of election being then and there disqualified as interested. The said inspectors of election will not pass upon the validity of the several proxies nor permit the complainants, their proxies or solicitors, to challenge the validity of any or all of such proxies, and illegal proxies will be voted and counted in favor of the adoption of resolutions in favor of the proposed revision of Article XII of the by-laws of the defendant company in favor of the revision of the authority previously attempted to be given to the directors to sell to the defendant company's employees shares of its common stock, and to modify the existing stock purchase contracts. As a result thereof the said resolutions will be illegally adopted and their adoption will be in fraud of the complainant's equities and rights in the premises.

7: The complainants herein have presented to the New Jersey Supreme Court their petition alleging the matters hereinabove complained of as making the said purported election of directors illegal, and in accordance with the statute in such case made and provided praying that that Court shall thereupon forthwith and in a summary way hear the affidavits, proofs and allegations of the parties, inquire into the matter or causes of complaint and thereupon order a new election of directors. In accordance with the orderly procedure of the Supreme Court no decision upon that application will be made until after the adjourned day of the said meeting.

8: The facts hereinabove alleged make it apparent that the complainants will be deprived of

their legal and equitable rights at the said adjourned meeting if the same is permitted to be held unless the same be permitted to be held only and solely under the supervision of and conducted by a Master of this Court.

Wherefore the complainants pray:

1: That the defendants and each of them answer this addition by way of supplement and each statement herein made.

2: That this Court adjudge and declare the purported election of directors of the defendant P. Lorillard Company on March 10, 1931, to be void.

3: That if the Court permit the adjourned meeting to proceed, either on the adjourned day, May 5, 1931, or any further adjournment thereof, that it order and direct that the said meeting be held under the supervision of and conducted by a Master appointed by this Court, who shall have full power and authority to pass upon the validity of any and all proxies presented at such meeting.

4: That the complainants may have such other and further relief as may be just.

And the complainants will ever pray.

McCarter & English,
Solicitors of Complainants.

Affidavit of George W. C. McCarter, Annexed to Addition by Way of Supplement.

Filed March 30, 1931

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

GEORGE W. C. MCCARTER, being duly sworn upon his oath according to law, deposes and says:

1. I am one of the solicitors of the complainants in the above entitled cause.

2. I have prepared a petition to the New Jersey Supreme Court, alleging substantially the same facts set up in the addition by way of supplement hereunto annexed, and praying that the Supreme Court inquire into the causes of complaint and order a new election of directors of the defendant P. Lorillard Company.

3. At the time of signing this affidavit the said petition has not yet actually been filed, but it will be filed before Monday, March 30, 1931.

G. W. C. MCCARTER.

Sworn to and subscribed before me,
this 25th day of March, 1931.

MARGARET LONG,
Notary Public of New Jersey.

[SEAL]

Affidavit of Leah M. Bailey, Annexed to Addition by Way of Supplement.

Filed March 30, 1931

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

LEAH M. BAILEY, being duly sworn upon her oath according to law, deposes and says:

1. I am a stenographer employed in the offices of Messrs. McCarter & English, the attorneys of the petitioners herein.

2. I attended the meeting of the stockholders of P. Lorillard Company on the 10th day of March, 1931, and took stenographically notes of all that occurred at that meeting while I was present. I have transcribed the said notes and Exhibit A hereunto annexed is a true and correct transcription thereof and record of what occurred at the meeting.

LEAH M. BAILEY.

Sworn to and subscribed before me,
this 25th day of March, 1931.

MARGARET LONG,
Notary Public of New Jersey.

[SEAL]

Exhibit "A", Annexed to Affidavit of Leah M. Bailey.

Stenographic notes taken by Leah M. Bailey at meeting on March 10, 1931.

The meeting was opened by the following statement made by Mr. H. Laurence Brooke:

The meeting please, I will read a letter from the President of the Company designating the person to preside at this meeting.

March 10, 1931.

Mr. H. Laurence Brooke,
P. Lorillard Company,
119 West 40th Street,
New York, New York.

Dear Sir:

I find that I am unable to attend the annual meeting of P. Lorillard Company to be held at the home office of the Company 15 Exchange Place, Jersey City, on March 10, 1931, at 11:00 o'clock A. M. I also find that none of the Vice-Presidents of this Company is able to attend this meeting. Therefore, by virtue of Section 4 of Article 2 of the by-laws, and pursuant to its terms, I hereby designate H. Laurence Brooke of the City of New York as the person to preside over said meeting.

Yours very truly,

B. L. Belt,
President.

Exhibit "A" annexed to Affidavit of Leah M. Bailey

Mr. L. E. Clements was designated as secretary of the meeting.

The Chair produced on behalf of the Board of Directors of the Company, the transfer books and stock books for inspection. Also a full, true and complete alphabetical listing of the stockholders entitled to vote at the ensuing election, with the residence of each and the number of shares held by each, namely the stockholders of record at 3:00 P. M. on February 9, 1931, being the record date fixed by the Board of Directors. These books are produced and this list is presented as required by law, for the inspection by the stockholders present, and the books and the list will remain open for inspection during the whole meeting.

The Chair read the notice of meeting sent to the stockholders.

The Chair also read the affidavits of mailing and publication of notice as required by law and the by-laws of the company.

Mr. Wolf moved that the designation of Mr. Brooke as Chairman and the notice and two affidavits read be annexed to the minutes. The Chair so ordered.

The Chair then requested that the stockholders present in person identify themselves as such.

Colonel Anderson then addressed the Chair as follows:

We request the right to examine the proxies before they are counted for the purpose of making a quorum—even for that purpose—because while the count may be tentative, yet they are used for the purpose of declaring a quorum in open meeting, and

therefore, I think I should make that request that we may examine them before they are used for any purpose whatsoever.

Mr. Brooke: In reply to your request, Colonel Anderson, the only thing I can say is that it is the desire of the Chair to accord to you gentlemen the fullest opportunity to inspect all proxies that are produced on behalf of the Lorillard Company which are running in my name as Chairman. We are more or less limited as to time, by reason of the fact, as you know, that the polls have to be open until five o'clock and remain open for two hours. Roughly, I think there are 5,000 proxies. I don't think you could possibly check over, or add them in the time that can be devoted before the polls are bound to open. I cannot see the necessity of having the check before the quorum is ascertained, because subsequently, from the proceedings of the meeting when we come to a vote on the election of directors, the vote reported back will show in and of itself whether there is a quorum present.

Colonel Anderson: I simply reserve my point.

Mr. Brooke: Yes, sir.

The Chair will present the proxies which are contained in this bag, which, according to our count, as we have just made it tentatively contains 1,275,059, so that it is perfectly evident that there is a quorum present.

Colonel Anderson: Does that include the presence of other proxies?

Mr. Brooke: They are the ones that are running to me only. The 1,275,059 is more than a majority.

Colonel Anderson: Mr. Chairman, I think you ought to count all of the stock present before de-

claring a quorum. Who are the gentlemen who are doing the checking?

Mr. Brooke: Mr. Clements, Mr. Prentice, Mr. Hunter and Mr. Halley.

Colonel Anderson: What is their connection with the Company?

Mr. Brooke: Mr. Clements is Assistant Secretary, Mr. Hunter is Assistant Auditor, Mr. Halley is Assistant to the Comptroller and Mr. Prentice is in the Insurance Department. All employees of the Company.

Colonel Anderson: We also hold proxies as your records show.

Mr. Brooke: You understand that the proxies are there.

Colonel Anderson: I understand that there is a satchel full here. To start that investigation would be a little laborious. As I understand it they are running to Mr. Belt, Mr. Perkins and yourself, and that they are on the table here, and were put on the table, as I understand it, for examination. I will do it a little later if you insist.

Mr. Brooke: Pursuant to the request for identification of the stockholders, the Chair finds that the foreign stockholders have identified themselves as being present at the meeting in person and holding the following number of shares:

Total of stockholders present in person 42,494 shares.

In Scott and Stringfellow, did you include some old $25 par.

Mr. Brooke: I think all shares are included—39. The list shows three divisions, one is of the no par

stock, one is of the $25 and one is of the old $100 common stock. We still have some of that, and what we have always done heretofore, and what will be done again is that the $100 is entitled as if it were four no par shares, with four votes. There are only 43 outstanding, but they are still outstanding.

The stockholders holding proxies and presenting them to the meeting are as follows:

all of these running in the name of Messrs. Scott & Stringfellow.

Those running in the name of Mr. R. H. Walker:

Mr. J. A. Dart:

Coleman Werthheim:

Other proxies presented are as follows:

Mr. Brooke: You asked me a question as to whether it included $25 stock. I am told that there are 900 more shares due you on $25 par stock.

That will make a correction in which those present in person represented by Scott & Stringfellow would be 40,245, instead of 39,345.

Scott & Stringfellow are present in person and not by proxy.

Mr. Brooke: There are 43,394 stockholders present in person, or represented by that number of shares, and stockholders present by proxy aggregating 200,331 shares.

Colonel Anderson: Those are in addition to those named by you as represented by you.

Exhibit "A" annexed to Affidavit of Leah M. Bailey

Mr. Brooke: The Chair will present proxies running to himself in this suit case which total 1,275,059 shares, making an aggregate represented at the meeting either in person or by proxy, 1,518,784.

Colonel Anderson: Mr. Chairman, with your permission, I would like——

Mr. Wolf interrupted to move that the proxies presented be lodged with the Secretary, which was done.

Colonel Anderson: Mr. Chairman, on behalf of Mr. James H. Scott, Jr., Scott & Stringfellow and Mr. Buford Scott, and the other stockholders represented either in person or by proxy, as I have already stated, by Mr. McCarter, Mr. Bocock and myself, I desire, by their instructions, and in behalf of each and every one of those stockholders so represented in person or by proxy, to challenge the validity of each and every one of the proxies presented purporting to be from various stockholders, and running to Messrs. Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, or either or any of them, or to their substitutes, which proxies a few minutes since have been presented on the table and are now before us in this bag. I desire also to protest the voting of any of those proxies, or powers of attorney, or the stock represented by them by any of the proxies named therein, or by the substitutes, at this meeting or at any adjourned meeting thereof, or counting of the stock so represented at this meeting, or any adjourned meeting for the purpose of making a quorum, and the reason for this challenge and protest, among others, I state as follows:

Exhibit "A" annexed to Affidavit of Leah M. Bailey

First: The by-laws of the Company, Article 2, Section 8, provides that the directors may appoint two inspectors of the annual election, at any time before notice of the meeting at which such election is held. The position of inspector of election was a judicial one, and no proper ascertainment of the stock present, or entitled to vote, can be made except by inspectors, and therefore any ascertainment or any counting of stock ascertained to be present by any other method, is invalid, and invalidates the meeting, and until inspectors have been appointed as required—which I take to be mandatory, although in permissive form—the meeting cannot be organized, and cannot be held.

Second: Because the stockholders, represented by myself and associates, named before, either in person or by proxy, have not had an opportunity to examine the proxies presented in the name of Messrs. Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, and proposed to be voted by the chairman of the meeting. The only persons who have examined those proxies at this meeting, are employees of the company and not inspectors, and until we have had an opportunity to examine and check these proxies as to their validity, we challenge the validity of each of them and protest their being voted or counted at this meeting.

Third: Because each of the proxies named is given, or purported to be given to persons who are officers or employees of the P. Lorillard Company, and are, or would be beneficiaries of the plan and bonus by-law proposed to be voted upon at this

meeting and they are not competent to act as inspectors to vote on a matter in which they are personally interested, and by which they would personally benefit, and the proxies running to them are therefore void.

Fourth: Because no full and proper information was or has been given to the stockholders of the company, either as to the present contracts for purchase of stock between the company and its officers and employees, or their participation in the bonus, or as to what is proposed to be done in any other plan suggested in the notice of meeting and proxies, to enable the stockholders to consider the same intelligently, or to act thereon, or to make valid any proxy given by stockholders to officers and employees of the company to vote upon such plan, or upon any matter coming before this meeting in the circumstances stated, and therefore, the proxies are void and cannot be voted at this meeting, or any other meeting of the stockholders, under the circumstances.

Fifth: Because many of these proxies, as I am informed and believe, are executed by fiduciaries under wills, deeds or other instruments, in general form, and it is not competent or lawful for a fiduciary to give a general proxy involving the exercise of discretion of any person. A fiduciary himself may vote, but such fiduciary can only execute a special proxy directing how the vote shall be cast upon any question, and authorizing such agent to exercise only ministerial and not discretionary power. Therefore, any fiduciary proxy included in those presented are expressly challenged

as to their legality for this reason, as well as the others stated.

For the reasons stated, it is insisted that there is not a quorum present at this meeting, and that the meeting can take no action except to adjourn; that the proxies which have been challenged and protested cannot be voted for any purpose whatever, and are void, and if at a meeting held or to be held such proxies, or any of them are used, they will be illegal and void as against stockholders of the company objecting to the same.

Mr. Brooke: There appears that there is present in person or by proxy, more than a majority in interest of all the stockholders entitled to vote at that meeting, and the Chair now states that it is in order to proceed with the election of directors.

Mr. Brooke nominated Mr. E. C. Hunter and Mr. W. H. Halley, who are not directors or candidates for that office as inspectors of election.

The motion was seconded.

Mr. Bocock: I nominate Mr. James H. Scott, Jr.

The motion was seconded.

Colonel Anderson: Mr. Chairman, may I ask you if Mr. Wolf is counsel for the Company.

Mr. Brooke: He is holding a proxy. He is in Mr. Perkins' office, who is counsel.

Mr. Prentice is in the Insurance Department of the Company, an employee.

Colonel Anderson: And may I ask for information, what, if any, relation the two gentlemen nominated for inspectors have in connection with the company.

Mr. Brooke: Mr. Hunter is Assistant Auditor and Mr. Halley is Assistant to the Comptroller of the Company.

Exhibit "A" annexed to Affidavit of Leah M. Bailey

Colonel Anderson: There are the two gentlemen nominated for the inspectors? I want also to raise objection to their acting as inspectors, and protest to their qualifications because of the fact that they are employed by the company, and also because they would probably be beneficiaries of the proposed plan of bonus and stock distribution.

Mr. Brooke: The gentlemen in nomination are Mr. C. E. Hunter, Mr. W. J. Halley and Mr. James H. Scott, Jr. The two receiving the highest votes will be the inspectors.

Colonel Anderson: I would like to get a ruling on the qualifications of the inspectors, if you don't mind—a specific ruling.

Mr. Brooke: The Chair rules that the two gentlemen are qualified to act as inspectors of election.

Colonel Anderson: I object to the ruling.

Mr. Brooke: Of course.

Colonel Anderson: Mr. Chairman, without repeating my protest in length, I would like to renew on the record at this point, my challenge of the right to vote, and protest against the voting of any of the stock represented by the proxies running to Messrs. Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, for the reasons already stated.

Mr. Brooke: All right, sir. For your information, the Chair read out that those presenting proxies represented 200,331. Since then they have discovered additional stock in the name of Davenport & Company, which was on the $25 list, so that Mr. Coleman Werthheim holds proxies for 1880 shares additional. The total represented by proxies, instead of 200,331 is 202,211.

Exhibit "A" annexed to Affidavit of Leah M. Bailey

That will withdraw from the number that the chairman claimed of proxies running to him by 5, which will make the total 1,275,054.

The Chair announced the vote for inspectors:

Mr. E. C. Hunter.....	1,329,296
Mr. W. J. Halley.....	1,329,241
Mr. James H. Scott, Jr...	241,431

The Chair declared that Mr. E. C. Hunter and Mr. W. J. Halley had been elected as inspectors of election.

Colonel Anderson: I want to protest that vote, and also the decision of the Chair, on the ground that the stock voted by Mr. H. Laurence Brooke was illegally voted on proxies which are not legal, for the reasons already stated.

Mr. Wolf: I move that the meeting proceed to the election of eleven directors for the ensuing year, or until their successors are elected and qualified.

Colonel Anderson: Mr. Chairman, before passing on that motion—I assume that the province of inspectors is to pass upon the qualifications of the people here to vote. We have not had any ascertainment, except by employees of the Company of the qualifications of those voting. How can we have an election of directors? The proxies were put on the table a little after two o'clock. They have been there just one hour, and a very hasty examination of some of the proxies indicates that they are void. I have one package before me, for instance, in which there is a proxy unsigned by anybody. Another is executed by Horace W. Phillips, Administrator—a general proxy. Another

one is executed by Estate of somebody, Commercial Trust Company of New Jersey.

Mr. Brooke: Colonel, I hate to rule you out of order. I desire to give you every opportunity to protest as fully and as freely as you desire with respect to any of the proxies in any way, but the motion before the meeting now is for the election of directors. The nominations have been made.

Colonel Anderson: Is that motion for discussion as to whether the meeting is ready for election of directors and whether the motion is in order? I raise the question that the motion is not in order. The proxies have not been inspected, and they are utterly and absolutely void in law. You are simply going ahead into a law suit. There is not a court in the United States which will sustain a general proxy of a fiduciary, and another thing, we are certainly entitled to appear before the inspectors of election and challenge them, otherwise we are given no opportunity. We are entitled to have a ruling, and we are entitled to appear before them, state our reasons here, if any, one by one, and have them rule whether the proxies shall be voted or not, if we are going to have an orderly meeting. I don't want to be disagreeable. I meant to say that the meeting is, if I may venture to say so, anticipating the cutting off of any right to challenge these proxies.

Mr. Brooke: Colonel Anderson, have you any objection to proceeding with the election of directors?

Colonel Anderson: I have until the inspectors have ascertained who is entitled to vote for directors, and until we are given an opportunity to

question the right of any person, whose right we desire to question, on any grounds we desire to present before the inspectors of election and have them rule on our objection.

Mr. Bocock: I desire to discuss the motion before the house, briefly. I do not think the stockholders should vote in favor of the resolution to proceed now to the election of directors. My reasons are these. On behalf of a very substantial number of stockholders, as soon as we got the notice of the proposed meeting and the business which was to come before it, namely the election of directors, voting on the bonus by-law, and on the proposed resolution to issue stock, we immediately sought certain information from the officers of the company. I can read a very brief letter which was addressed to the President of the Company, which will show the information that we were seeking.

Mr. Brooke: It is not the desire of the Chair to keep from giving you full opportunity to be heard, but I don't think that is traveling to the motion.

Mr. Bocock: The motion, sir, is to vote for directors.

Mr. Brooke: The motion is to proceed to the election of directors.

Mr. Bocock: I am arguing against that motion. We don't have to elect directors if the stockholders don't choose to elect directors. The Court did not say you should elect directors if the stockholders don't care to do it. There is no power on earth to force us to it.

(Mr. Bocock continued where he left off before the interruption, and read letter of February 26,

1931, addressed to Mr. B. L. Belt, President.) No answer has ever been received to that letter. We have arranged and held conferences with certain members of the management of this company, and that information has been steadfastly refused. Final refusal was given at twelve o'clock last Wednesday, which was the 4th of March. We immediately filed a bill for an injunction before Vice Chancellor Bigelow in Jersey City, asking that the officers and directors be enjoined from holding the meeting, from electing directors, from voting for the proposed by-law, and from voting on the proposed resolution to issue stock. The Chancellor, that afternoon, granted such an injunction. On yesterday, counsel for the corporation, moved to vacate the injunction, and the Court refused to vacate it, except to allow the meeting to vote for directors, if the meeting so advised. I want to protest here, and record my protest against a corporation, all of whose directors are officers or employees of the coporation, from calling and holding a meeting without giving proper information to the stockholders, both as to what they intend to do, and as to their self-interest in doing it. I think this meeting should adjourn, without any action at all, until the information asked for has been forthcoming.

The Chair announced that the motion was carried and directed that the meeting proceed with the election of eleven directors.

Mr. Brooke: I move that the following gentlemen be elected as directors for the ensuing year, or until their successors are elected and qualify:

Exhibit "A" annexed to Affidavit of Leah M. Bailey

Mr. Benjamin L. Belt
David H. Ball
Earl J. Bush
William W. Drewry
J. Strother Freeman
George H. Hummel
James T. Keel
Everett Meyer
Alva H. Shinkle
Harry A. Stout
E. Grayson Weymouth.

Colonel Anderson: What connection, if any, have these gentlemen with the company?

Mr. Brooke: Benjamin L. Belt is the present President. David H. Ball is the present Vice President. Earl J. Bush is present Vice President and Comptroller. William W. Drewry is in charge of little cigar department. J. Strother Freeman is factory manager. George H. Hummel is one of the Vice Presidents. James T. Keel is in charge of leaf tobacco buying. Everett Meyer is one of the Vice Presidents. Alva H. Shinkle is factory manager. Harry A. Stout is Treasurer of the Company. E. Grayson Weymouth is one of the Vice Presidents.

Colonel Anderson: Do you know whether these gentlemen are in New York today?

Mr. Brooke: They were in New York when I left. You mean the Vice President?

Colonel Anderson: I mean some of them.

Mr. Brooke: I don't like to be constantly interrupting. The motion before the meeting now is for election of directors. I certainly think, and I

think you are bound to agree with me, that you are out of order.

Colonel Anderson: I will sit down until I am in order.

Mr. George McCarter: I nominate Mr. James H. Scott, Jr.

Mr. Bocock: I second the nomination.

Colonel Anderson: Are any of the gentlemen nominated by you present?

Mr. Brooke: None of the nominees are present.

Colonel Anderson: Are they at present directors of the company?

Mr. Brooke: Yes, sir.

A motion was made that the nominations be closed. The motion was seconded.

Mr. Wolf: I move that the polls remain open for two hours commencing at 3:30 and closing at 5:30. The polls were then declared open for two hours commencing at 3:30, and the Chair declared that the inspectors of election were prepared to receive votes of the stockholders.

Colonel Anderson: I want to ask if these gentlemen are holders of record of any stock in the company, and if so, how much?

Mr. Brooke: The stock list is here. You can ascertain it very easy. All of them are holders of record of stock in the company.

Colonel Anderson: I am going to make a protest as I have not got the list. I object on the ground that these gentlemen, or some of them, are not qualified, because they are not bona fide holders of stock, but hold the stock just in their names.

Mr. Brooke: I think that is an assumption.

Colonel Anderson: I think that is a fair assumption, as I cannot get evidence.

Exhibit "A" annexed to Affidavit of Leah M. Bailey

Mr. Brooke: The Chair insists that the list is present containing all the stockholders of record on February 9, 1931, and the list is at the disposal of Colonel Anderson to examine for himself, as it has been during the entire meeting.

Colonel Anderson: My objection is that there is no evidence that they are actually bona fide owners of stock; that the stock is merely put in the names to qualify them, and in the absence of information that they are actually bona fide holders of stock of P. Lorillard Company, I object to their qualifications to be elected or serve as directors. I want to further renew my protest against the voting of each and every share of stock, and each and every share represented by proxies presented in the name of Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, for the reasons already set forth at length, and for the further reason that no adequate information was given to the stockholders to enable them to determine how they should vote at this meeting, and for the further reason that it does not appear that the gentlemen nominated for the position of directors are in fact beneficial or bona fide owners of stock.

Mr. McCarter: I would like to ask the inspectors when they will hear us on the objections to the proxies running to Mr. Brooke and others.

Mr. Brooke: I don't know of any provision in the statute which gives you such a right.

Mr. McCarter: It is not in the statute in so many words, but the officers have taken an oath to conduct the election fairly and impartially. I think they should give us an opportunity to indicate to them such proxies as we think are invalid, and

that the proxy is in some respects defective. I have seen a number of them; proxies purporting to be signed by someone other than the stockholder, which is, of course, invalid, and they cannot be counted in the total of votes for directors. I have no idea what the grand total of these illegal proxies is. It might possibly not affect the result, but it might.

Mr. Brooke: I know of no provision of law governing that point. I do not want to consider that, or argue that, or debate before the inspectors of election who are receiving the vote and tabulating the ballot. When they report back, their report will show the exact number of votes that were cast for these different gentlemen who have been nominated for directors. You can protest against the vote if you see fit, or protect your rights in any other way that occurs to you. I know of no provision of the law which passes upon or decides the question of the legal rights with respect to proxies, as to revocation and as to notice which you gentlemen have raised.

Mr. McCarter: That is just what they are for. In order that they may be impartial persons who are in the first instance to pass upon the validity, as well as the numerical total of the ballots cast. I make the request not so much to the Chair, but I make the request in the presence of, and direct to the inspectors of election, to say what we have to say with respect to the validity of certain of the proxies entered.

Colonel Anderson: The inspectors made no reply to that request.

Mr. Werthheim: I would like to know, for the benefit of the stockholders whom I represent, how much of the $30 stock was subscribed for by officers and directors of the P. Lorillard Company, how much was paid for, and where it is being carried on the balance sheet.

Mr. Brooke: I don't think that a proper question to be put before the meeting.

Mr. McCarter: May I ask the inspectors of election whether they will recognize as a valid proxy to be counted in determining who are elected directors at this meeting, the proxy dated February 18, 1931, running to Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, or any of them, for stock standing in the name of Horace B. Phillips, and signed by somebody whose name I think is Horace W. Phillips, Jr., Administrator of the Estate of Horace B. Phillips.

Mr. Brooke: That is a ruling of the Chair and you can register your objection and protest and preserve your right in any way that you see fit and you may desire to.

Colonel Anderson: In order to save time Mr. Chairman, may I ask if that will be your ruling as to all proxies which we desire to protest before the inspectors.

Mr. Brooke: I have ruled on that particular one and I ask now that the inspectors retire and take the ballots and the proxies and stock list and tabulate the vote.

Colonel Anderson: Will you make a ruling, because I don't want to take each one.

Mr. Brooke: You can preserve your rights in any way you see fit, but it is certainly out of order for

you to interrogate the inspectors as to any particular proxy involved, as to whether it was properly executed or not.

Colonel Anderson: When would it be in order for us to protest before the inspectors?

Mr. Brooke: I know of no provision of the New Jersey law which gives you that right. If you can cite me to the law, that is another question Colonel Anderson. I am not daring in any way to take away from you any legal right that you have, but I don't think that you have shown—certainly not to my satisfaction or to the others satisfaction, that you have that legal right.

Colonel Anderson: The only question I raise is that you hold we have no right to object to the voting of any of these proxies before the inspectors of election. If that is your ruling——

Mr. Brooke: I think the record speaks for itself.

Colonel Anderson: I will ask—— (Let me have one of those proxies.)

Mr. Brooke: I will rule that there is no provision of law,—certainly none has been called to the attention of the Chair—which gives you the right which you are seeking.

Colonel Anderson: I would like to ask this question too, Mr. Chairman while we are in the meeting. I would like to ask, on behalf of the stockholders whom I represent, the terms of the contract for the sale of stock at $30 a share, and if any was sold at $20 a share, at $20, to officers and directors of the company:

1. Whether that stock was to be held for any period of time, in escrow or otherwise, and if so, for what period, and whether the period was the same as to all stock. Whether the payments on the stock were carried by the company or not, and if so, at

what rate of interest, and if the rate of interest was the same as to all purchasers among employees and officers, and if there were any variations in the contracts for the sale of this stock between these various persons, what those variations were. I mention these specifically one after one to the Chairman of the meeting.

Mr. Brooke: The Chair would like to call the attention of the people to the fact that this is a meeting of the stockholders. The Chair is presiding by virtue of a designation, not as an official of the company whatever, and that none of the questions that the speaker has asked are germane to any of the questions before the meeting.

Colonel Anderson: It seems to me that the questions which were directed were most pertinent to the welfare of the company and the rights of the stockholders.

Mr. Brooke: I have ruled, whether right or wrong, that the Chair does not think the questions are germane.

Colonel Anderson: I will ask you whether you are a director of the company.

Mr. Brooke: I am not. I am the Secretary of the Company.

Colonel Anderson: I will ask you, as Secretary of the Company, the questions that have been asked of you as Chairman of the meeting. I will ask you as Secretary of the Company the various——

Mr. Brooke: I will say that you are out of order.

Colonel Anderson: If you wish to refuse to answer me, that is all right.

Mr. Brooke: I have told you I have ruled the only thing before the meeting is the election of directors.

Colonel Anderson: Just as a matter of convenience, is there any purpose to act on any other matter than the election of directors and adjourn. There is no reason for sitting here.

Mr. McCarter: In answer to an informal question from Colonel Anderson, the Chair stated informally that no further business would be taken up at the meeting, except to receive the report of the inspectors of election, declare the election of directors accordingly as reported and state to the meeting that pursuant to order of the Court of Chancery, the meeting would be adjourned until April 21, 1931, at the same hour and place, and Colonel Anderson then requested the Chair to permit him to deliver to the Chair now his written protest against the election of directors, which written protest is as follows:

> "On behalf of the stockholders represented by myself and associates already stated, I desire to enter a protest against the report of the inspectors, and against receiving the persons reported by them as having been elected directors of the Company, upon the ground that the stock claimed to be represented by Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, or any of them, has been illegally voted and counted in said election, the reasons for said objection and protest having been heretofore stated at length and are hereby referred to as if again repeated."

The Chair announced that he would have that protest entered in the record of the meeting upon the coming in of the inspectors' report.

Answer of Defendant, P. Lorillard Company.

Filed March 30, 1931.

The defendant, P. Lorillard Company, for its answer to the bill of complaint and the addition thereto by way of supplement in this cause says that:

1. The defendant admits the allegations of paragraph 1 of the bill of complaint, except that it says that Exhibit 1 annexed to the bill of complaint is not a true copy of its certificate of incorporation, as amended. A true copy of the amended certificate of incorporation is annexed to the affidavit of Benjamin L. Belt, president of the defendant company, heretofore filed on behalf of the defendant in this cause.

2. The defendant admits that the complainants are stockholders of the defendant company, and begs leave to refer to the stock records of the defendant company for the periods during which they have been stockholders, respectively.

3. Referring to the allegations of paragraph 3 of the bill of complaint, the defendant admits that on the 10th day of March, 1925, the stockholders of the defendant company passed the following resolution at their annual meeting held on that day:

> "RESOLVED: That the Board of Directors of the Company be and it hereby is authorized

to sell at not less than $30 per share, not exceeding 100,000 shares, of the authorized and unissued Common Stock of the Company to such employee or employees of the Company, at such time or times, on such term or terms, in such manner or manners and in such amount or amounts as may be determined by the said Board of Directors at any time or from time to time."

The defendant admits that on the 7th day of September, 1929, the stockholders of the defendant company passed the following resolution at a special meeting of the stockholders held on that day:

"RESOLVED: That the Board of Directors of this Corporation be and it hereby is authorized to issue and sell at not less than $20 per share not exceeding 150,000 shares of Common Stock without nominal or par value out of the increased number of such shares this day authorized by the stockholders and unissued, to such employee or employees of the Corporation at such time or times on such term or terms in such manner or manners and in such amount or amounts as may be determined by said Board of Directors at any time or from time to time."

The defendant admits the sale of shares of stock to employees at $30 per share under the authority of said resolution passed on the 10th day of March, 1925, upon the terms of a written contract annexed as an exhibit to the said affidavit of the

said Belt and avers that at 3 P. M. on the 9th day of February, 1931, there were 53,938 shares embraced in such contracts then existing and outstanding.

The defendant admits that no shares have been sold under the authority of the resolution passed on the 7th day of September, 1929.

The defendant admits that at the passage of the said resolutions authorizing the sale of shares at $30 and $20 respectively the market value of such shares was substantially greater than such prices and it denies that at such times the book value of such shares was less than such prices.

4. Referring to the allegations of paragraph 4 of the bill of complaint, the defendant says that Exhibit 6 annexed to the said affidavit of the said Belt accurately informs the complainants of the terms of the contract of purchase entered into with each and all of the employees who contracted to purchase stock pursuant to the said resolution of March 10, 1925, and admits that all of said stock, to the extent such contracts are now outstanding, stands on the books in the name of H. Laurence Brooke, as Agent, and that said Brooke is secretary of this defendant company. Defendant admits that the complainants have not been furnished the names of the employees purchasing shares under such contracts, nor the number of shares purchased by said employees respectively, but it denies that such information is material or relevant in this cause.

5. Referring to the allegations of paragraph 5 of the bill of complaint, this defendant admits that

the shares embraced in said contracts are still in part unpaid for, that defendant has not furnished to complainant the exact facts in that regard and that defendant received the letter, a copy of which is attached as Exhibit 2 to the bill of complaint. But this defendant denies that it has wrongfully withheld any information in this respect or that such information is material or relevant in this cause.

6. Referring to the allegations of paragraph 6 of the bill of complaint, this defendant shows that the annual meeting of the stockholders of the defendant company was held on March 10, 1931, for the purpose of the election of directors of the defendant company, as permitted by the order of this Court made and entered in this cause on the 9th day of March, 1931, and says that said meeting was duly called and held pursuant to law and the by-laws of the defendant company. The defendant admits the mailing by said Belt of a letter, of which Exhibit 4 annexed to the bill of complaint is a copy, and begs leave to refer to said letter for the terms thereof. The defendant admits that since the resolution of March 10, 1925, its common shares have sold on the New York Stock Exchange at prices in excess of $30 per share. The defendant denies all the remaining allegations of paragraph 6 of the bill of complaint.

7. Referring to the allegations of paragraph 7 of the complaint, the defendant admits that it has eleven directors, in accordance with its by-law in such case made and provided, and that all of said

directors are now, and always have been, either officers or employees. The defendant further admits that said directors are entitled to receive a bonus, based on the number of shares of common stock held by them, under the terms of the bonus by-law of this defendant adopted by its stockholders at the annual meeting thereof in March, 1921, a copy of which by-law is annexed as an exhibit to said affidavit of said Belt, and refers to said exhibit for the terms of said bonus by-law.

8. Referring to the allegations of paragraph 8 of the bill of complaint, this defendant admits that Exhibit 5 annexed to said bill of complaint is a copy of a proposed revision of said bonus by-law and of a proposed revision of said resolutions of March 10, 1925, and September 7, 1929, which accompanied the said letter of the president of this defendant company dated February 14, 1931, and begs to refer to said exhibit for the terms thereof.

9. The defendant denies the statements made and conclusions drawn in paragraph 9 of the bill of complaint and in substantiation of this denial begs leave to refer to the terms of said resolutions of March 10, 1925, and September 7, 1929, and to the provisions of the said contracts made under the authority of said resolution of March 10, 1925.

10. The defendant denies the statements made and conclusions drawn in paragraph 10 of the bill of complaint and in substantiation of this denial begs leave to refer to the terms of said resolution of March 10, 1925, and September 7, 1929, and to

the provisions of the said contracts made under the authority of said resolution of March 10, 1925.

11. For answer to paragraph 11 of the bill of complaint, this defendant says that the allegations thereof are not a full and accurate statement of the proposed revision of said bonus by-law of the defendant company, and for all of the terms and conditions thereof begs leave to refer to Exhibit 5 annexed to the bill of complaint.

12. For answer to paragraph 12 of the bill of complaint, this defendant says that the allegations thereof are not a full or accurate statement of the difference therein referred to, and this defendant begs leave to refer to the original bonus by-law adopted by its stockholders at their annual meeting in 1921 and the terms of the proposed amendment thereof, heretofore referred to.

13. This defendant denies the statements made and conclusions drawn in paragraph 13 of the bill of complaint, except that it admits that at the time of the filing of the bill of complaint in this cause the common stock of the defendant company was then selling on the New York Stock Exchange at between $16 and $18 per share, and except further that it refers to the published statement of this defendant for the book value of the common shares thereof as of December 31, 1930.

14. Referring to the allegations in paragraph 14 of the bill of complaint, this defendant denies that the form of the proposed bonus by-law is either

technical or difficult of comprehension, that the proposed amendment is either illegal or improper or has inequities or that it has not been properly brought to the attention of the stockholders. On the contrary, defendant avers that said bonus by-law was adopted by the stockholders in March, 1921, has been constantly in force since that time, is a familiar scheme of bonus by-law well understood by the stockholders, and that the proposed amendment thereof has been brought to the attention of the stockholders in a way that makes plain to them the terms and effect thereof.

This defendant admits that through its secretary, Mr. H. Laurence Brooke, it received from one of the complainants the letter, a copy of which is annexed to the bill of complaint as Exhibit 6, and that its said secretary wrote to one of the complainants the letter, a copy of which is annexed to the bill of complaint as Exhibit 7. But this defendant denies that the said complainants, or any one or more of them, have at any time been denied any right to inspect or examine or to make excerpts or extracts from the stock list or transfer books or stock books or other stock records of this defendant. Defendant further avers that it has recently caused to be prepared, at its own instance, pains and expense and has furnished to the complainants a photostatic copy of the stock list which, in accordance with law, was produced at said election of directors on March 10, 1931, and which showed in full and in alphabetical order the stockholders, with their addresses and the number of shares held by each, entitled to vote at such election of directors and any adjournment thereof.

15. Referring to the allegations of paragraph 15 of the bill of complaint, this defendant admits that its said secretary wrote to one of the complainants the letter, a copy of which has been annexed to the bill of complaint as Exhibit 8. This defendant further admits that said H. Laurence Brooke, as Agent, voted at said election 53,938 shares under the said contracts made under authority of the said resolution of March 10, 1925. The defendant is advised by counsel, and therefore says, that the said Brooke, as Agent, was legally entitled to vote said shares at said election and will be legally entitled to vote said shares upon all questions to be lawfully voted upon by stockholders at any meeting of the stockholders of this defendant. But this defendant denies that it is the intention to vote said stock for or against the proposed cancellation of said contracts made under authority of the resolution of March 10, 1925, at any meeting of the stockholders of this defendant held pursuant to said notice of said annual meeting, for the reason that the question of the cancellation of said contracts, or any of them, will not come before any such meeting. This defendant denies the remaining allegations in paragraph 15 of the bill of complaint.

16. This defendant denies the allegations in paragraph 16 of the bill of complaint, except as hereinbefore admitted.

17. This defendant denies the allegations of paragraph 17 of the bill of complaint.

18. This defendant denies the allegations of paragraph 18 of the bill of complaint.

19. Referring to the allegations in paragraph 19 of the bill of complaint, this defendant admits that the management of this defendant company caused to be sent to all of the stockholders of the defendant company a form of proxy, a copy of which is annexed to the bill of complaint as Exhibit 9, that in said form of proxy Benjamin L. Belt, William R. Perkins and H. Laurence Brooke, or any of them, are given the authority to cast the vote of all of the stockholders signing the proxy, and that the said Belt is the president and a director of this defendant, that said Perkins is the counsel for this defendant, and that said Brooke is the secretary of this defendant. This defendant denies all the remaining allegations in paragraph 19 of the bill of complaint.

20. Referring to the allegations of paragraph 20 of the bill of complaint, this defendant denies that the duty therein stated rested upon it as respects an annual meeting, and in support of this denial refers to the statutes, particularly Sec. 1, sub-paragraph VI and Sec. 17 of the General Corporation Acts of New Jersey, and the by-laws of this defendant which authorize and provide that at an annual meeting of this defendant any business may be transacted without notice of the object of such annual meeting.

This defendant avers that the stockholders, including the complainants, well knew that all of the directors of this defendant are now, and from its

organization have been, officers or employees of this defendant giving their whole time and attention to its affairs and therefore entitled to participate under the present bonus by-law, under the proposed amendment thereof, under the said resolution of March 10, 1925, under the said resolution of September 7, 1929, and under the proposed revision of said resolutions.

This defendant avers that all of the stockholders, including the complainants, well knew that the three persons in whose favor said proxies ran were officers or employees of this defendant; such proxy was attached to a notice of the annual meeting, signed by said Brooke as secretary of this defendant, and said notice was accompanied by a letter signed by said Belt as the president of this defendant; said Brooke has been the secretary of this defendant for a good many years; said Belt has been a director of this defendant from its organization and a vice-president thereof until he was made president thereof in March, 1924; and said Perkins has been the counsel of this defendant since its organization in November, 1911.

21. This defendant admits the allegations of paragraphs 1, 2 and 3 of the addition by way of supplement to the bill of complaint herein, except that it denies that the words "attempted" and "purported" are applicable to said meeting and the proceedings thereat. This defendant avers that said meeting was organized and conducted and that said eleven persons were elected directors in a due, legal and valid manner.

22. This defendant denies each and every allegation of paragraph 4 of the addition by way of supplement to the bill of complaint herein, and it denies that the subdivisions of said paragraph 4 set forth any particular which, if true, would justify the conclusion that said meeting was conducted in an unlawful or irregular manner, or any reason why said election of directors is or should be held unlawful or void.

23. Answering the allegations in paragraph 5 of said addition by way of supplement to the bill of complaint herein, this defendant admits that the said meeting of stockholders was adjourned to meet on the 5th day of May, 1931, pursuant to the order of this Court in this cause made and entered herein on the 9th day of March, 1931, and that at such adjourned meeting, unless restrained by this Honorable Court, the stockholders will consider and take such action as they may desire upon the proposed revision of the bonus by-law of this defendant and upon the proposed revision of the said resolutions of March 10, 1925 and September 7, 1929. This defendant denies that said adjourned meeting, or any adjournment thereof, will consider and pass upon the cancellation of the said existing stock purchase contracts with employees.

24. This defendant denies the allegations in paragraph 6 of said addition by way of supplement to the bill of complaint herein.

25. This defendant has no knowledge or information sufficient to form a belief with respect to

the allegations of paragraph 7 of the addition by way of supplement to the bill of complaint herein. No notice of an intention to make such an application as required by the statute in such case made and provided, has been served upon this defendant.

26. The defendant denies the allegations in paragraph 8 of said addition by way of supplement to the bill of complaint herein.

Further answering the bill of complaint, this defendant says:

27. Upon the organization of the defendant company in 1911, by-laws were duly made and adopted for the defendant company under and by virtue of the authority of the statute in such case made and provided. Section 3 of Article II of the defendant's by-laws, so adopted, provides in part and ever since its making and adoption in 1911 has provided, as follows:

> "Due notice of each special meeting (of stockholders) shall be given also in the manner above provided. The notice shall state the object of the special meeting, and no other business shall be transacted at such meeting; but this provision shall not apply to annual meetings, at which any business may be transacted without notice of the object of such annual meeting."

Said by-law is correctly set forth in Exhibit 3 annexed to the bill of complaint filed in this cause.

28. Said by-law became and ever since 1911 has continued to be a binding and material term of

the contract between the stockholders of the defendant company *inter sese* and between the defendant company and its stockholders.

29. By virtue of said by-law and contract the defendant company was not obligated in law to give notice of the object of the annual meeting of stockholders called for the 10th day of March, 1931, and neither the complainants nor the other stockholders of the defendant company were entitled in law to any notice of the object or objects of said annual meeting.

Further answering the bill of complaint this defendant says:

30. Section 17 of the General Corporation Act of New Jersey provides in part as follows:

> "At any annual meeting for the election of directors any business may be considered and transacted which may properly be brought before a general meeting of the stockholders, and, if due notice be given, any business may be considered and transacted which under any of the provisions of this act may be considered and transacted at a special meeting of stockholders."

31. Said provision of the General Corporation Act is a binding and material term of the contract between the stockholders of the defendant company *inter sese* and between the defendant company and its stockholders.

32. By virtue of said provision and contract the defendant company was not obligated in law to give notice of the object of the annual meeting of stockholders called for the 10th day of March, 1931, and neither the complainants nor the other stockholders of the defendant company were entitled in law to any notice of the object or objects of said annual meeting.

WHEREFORE, this defendant prays that it may be hence dismissed, with its reasonable costs in this behalf sustained.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Defendant, P. Lorillard Company.

SHELTON PITNEY,
Of Counsel.

Opinion by Bigelow, *V. C.*

Filed April 14, 1931.

The sixteen complainants severally own 7,413 shares of the common stock of P. Lorillard Company of a market value of about $120,000. They seek, *inter alia,* to restrain the company, its officers and agents, from permitting a vote to be had at a stockholders' meeting upon a proposed amendment to the by-laws of the company and upon a resolution authorizing an issue of stock. The most important part of the amendment to the by-laws reads:

"RESOLVED: That Article XII of the By-laws entitled 'Bonus to Officers and Employees' be amended so as to read as follows:

"Section 1. As soon as reasonably may be after the end of the calendar year 1931, and of each calendar year of the Company's existence thereafter, and under and in accordance with all the terms of this Article, the Treasurer of the Company shall ascertain the net profits of the Company for such year, and shall pay and distribute an amount of such net profits equal in the aggregate to five per cent. (5%) thereof to and among those officers and employees of the Company who have both been in the employ and owned Common Stock of the Company as hereinafter stated as an extra dividend upon and in the proportion among such officers and employees of such shares of Common Stock thus owned by them respectively."

Then follow definitions of "net profits" and "owned" and limitations on the number of shares on which any one officer or employee may receive the extra dividend.

The first inquiry is into the authority of the corporation to take the proposed action. The company is organized under the General Corporation Act of New Jersey (C. S. 1592). Its certificate of incorporation as amended authorizes preferred stock of the par value of $100 a share as well as common stock without nominal or par value.

The proposed revision of the bonus by-law provides in effect for the payment of dividends on a part of the common stock. These dividends would be different from usual dividends in two major particulars: The amount of each dividend, be it $100,000 or some other sum, would not be determined by the Board of Directors but by a mathematical calculation; the dividend would be distributed not among all common stockholders but only among such as are officers and employees of the company, pro rata their stockholdings within certain limits. These limits vary for different officers and classes of employees; if the president, for instance, holds more than seven and one-half per cent. of the outstanding common stock, his part of the dividend would be calculated only on such number of shares as equal seven and one-half per cent.

Now, it is certain that in the absence of express statutory sanction, a corporation cannot, except by unanimous consent of its stockholders, make a distinction in the rate of dividends paid, among stockholders of the same class. And it cannot accomplish this result merely by denominating as "bonus" the excess dividends paid to one group of stockholders; the court will look through the form into the substance of the scheme.

The most obvious authority for the proposed action of the corporation is "An Act concerning cor-

porations of this state and the participation of their employees and those actively engaged in the conduct of their business in their stocks, profits, welfare work or management." P. L. 1920, p. 354. But the company expressly disclaims this source of authority; it has not followed the method there prescribed. Hence I need not inquire whether this by-law could be supported by the act of 1920. Counsel for the company assert that the basis for the proposed action is Section 1 (VI) of the Corporation Act (C. S. 1598), giving every corporation power "To make by-laws * * * providing for the management of its property, the regulation and government of its affairs." This section is not a sufficient basis for impairing the equality among stockholders of the same class. But counsel do not admit that this is the effect of the proposed by-law; they say the payments prescribed by it are not dividends but extra compensation for its officers and directors. I doubt whether the stockholders have jurisdiction to settle such compensation (except perhaps for directors) either by stating the amount, or by prescribing a formula whereby it may be calculated. Section 1 (VI) must be read in connection with Section 12, "The business of every corporation shall be managed by its directors." The stockholders may, of course, choose directors who will act in accord with their wishes; they may limit the authority of the latter pursuant to Section 8 (VII) but they cannot usurp the powers of the Board. Loewenthal v. Rubber Reclaiming Co., 52 N. J. Eq. 440, 28 A. 454. Plaquemines etc. Co. v. Buck, 52 N. J. Eq. 219, 27 A. 1094. It should be noted that

the directors have not formulated or approved the proposed by-law.

I will assume, however, that the stockholders under Section 1 (VI) may vote extra compensation to officers and employees. They must exercise this power in a reasonable manner; the compensation must be a function of the employment. For instance, officers and employees might participate in a bonus in proportion to their salaries, or the length of their service with the corporation, or in accordance with the quality of their work or the results produced by them, or in some other manner related to the employment. But I do not think the participation can be determined by some factor entirely foreign to their employment, whether it be ownership in the stock of P. Lorillard Company or of some other corporation. I assume an illustration of the operation of the proposed by-law: One clerk in the company's employ receives a salary of $2,000; his work is mediocre; he has been with the company only one year; he happens to own 10,000 shares of common stock and therefore his share of the proposed bonus will be, say, $10,000. Another clerk receives likewise a salary of $2,000 and does the same class of work at an adjoining desk. He has been in the employ of the company for several years; his work is excellent, but he owns no common stock and will receive none of the bonus. Such a bonus is not compensation for services; it is a dividend upon capital.

It might be urged that the extra dividends provided by this by-law would encourage employees to buy the company's stock and, by stimulating the

market, increase the price of the stock to the benefit of all stockholders. It is not the duty of the company, however, to bolster the market for the company's stock. Or it might be said that encouraging officers and employees to purchase stock will tie them to the company and so promote efficiency of operations. This is a most desirable end, but it cannot be accomplished legally by the payment of extra dividends on stock held by them without first creating a special class of stock in the manner prescribed by law. Prindivile v. Johnson & Higgins, 93 N. J. Eq. 425, 116 A. 785, is an interesting case which touches this subject.

In 1921, the stockholders adopted the by-law which it is now proposed to amend; the original by-law and the amendment are much alike. The complainants and their predecessors in title apparently acquiesced in the adoption of the by-law of 1921 and never objected to any distribution among employees pursuant to its direction. Does this acquiescence on their part prevent them from effectively objecting to the amendment? I think not. The principal difference between the two by-laws is this: Under the old by-law there is first set aside out of net profits available for common stock dividends, $1.50 a share on the outstanding common stock and seven per cent. on the surplus, and then a dividend amounting to fifteen per cent. of the balance becomes distributable among employees stockholders. Under the proposed amendment, five per cent. of the entire net profits would be distributable among the officers and employees. The proposed plan gives employees and officers a larger share than the old, when earnings are less than about $5,000,000 and a smaller share when the

earnings exceed that figure. Net profits during the past five years have averaged only $1,900,000 a year. No bonus under the present by-law has been payable since 1926, when $22,978 was distributed. If the amendment had been in effect during those five years, the distribution on stock of officers and employees would have been $467,870.

The conduct of the complainants in respect to the by-law of 1921, does not work an estoppel against them; it does not operate as a waiver of their general right to participate equally with other stockholders in the distribution of earnings. At most, they have consented to the by-law of 1921; but they are free to object to another by-law which is more disadvantageous to them, or which they may reasonably consider so to be.

The bill of complaint does not base its main attack on the amendment to the by-law, upon the grounds above considered. It does, however, set forth the proposed by-law in full; its illegality appears on its face and provides a sufficient basis for relief. Colgate v. U. S. Leather Co., 75 N. J. Eq. 229, 72 A. 129.

Counsel for the company contend that the suit is prematurely brought; that the stockholders, if permitted to vote, may reject the plan and so the questions at issue may become academic. Grausman v. Porto Rican American Tobacco Co., 95 N. J. Eq. 223, 122 A. 815. It is true that the court in that case dwelt upon the possibility that the proposed plan might be rejected by the stockholders but the court also said: "If, upon the face of the resolution, it appeared that it contemplated the commission of a fraud upon a statute of this state as was the situa-

tion in Riker & Son Co. v. Drug Co., 79 N. J. Eq. 580, 82 A. 930, Ann. Cas. 1913 A, 1190, then, of course, a sufficient basis would have existed for the interference of a court of equity." In the Riker case, the court considered a proposed dissolution of the Drug Company and found that the prime purpose was not dissolution but the absorption of the company by another corporation. The Chief Justice said, "The scheme in the carrying out of which the dissolution of the company is a proposed step, is a fraud upon the statute (the work is used in a legal and not a moral sense)." I have found no satisfactory definition of the term "fraud upon the statute", but I think it includes a plan to deprive stockholders of their equality by means of a by-law adopted under color of the statute. Since the Grausman case was decided, General Investment Co. v. American Hide & Leather Co., 97 N. J. Eq. 214, 127 A. 529; 98 N. J. Eq. 326, 129 A. 244, was heard and affirmed by the Court of Errors and Appeals. There the suit was maintained although the bill was filed before the stockholders' meeting. The danger that dissenting stockholders incur by delay is well illustrated in Windhurst v. Central Leather Co., 101 N. J. Eq. 543, 138 A. 772. Dissentients relying, as they said, on the Grausman case, waited to see what action the stockholders' meeting would take. It approved an amendment to the certificate of incorporation; the amendment was filed the very next day; securities were issued thereunder, and when the bill was filed less than a month after the stockholders' meeting, the objectors found themselves barred by their laches. The bill now before the Court was not filed prematurely; complainants

need not wait until after the adoption of the by-law and then sue to restrain payments thereunder.

I turn to the proposed resolution authorizing the issue of stock. It reads:

> "RESOLVED: That the resolution passed March 10, 1925, authorizing the Board of Directors to sell to employees not exceeding 100,000 shares of Common Stock at not less than $30 per share and the resolution passed September 7, 1929, authorizing the Board of Directors to sell to employees not exceeding an additional 150,000 shares of Common Stock at not less than $20 per share, are hereby amended and consolidated so that in lieu of said resolutions the Board of Directors shall be and it is hereby authorized to issue and sell at not less than $10 per share not exceeding 250,000 shares of the Common Stock of this Company, without nominal or par value, to such officers and employees of the Company, at such times, on such terms and in such manner and amounts as may be determined by said Board at any time and from time to time.
>
> "RESOLVED FURTHER: That any contracts now existing for the sale to employees of Common Stock under said resolution of March 10, 1925, may be by said Board cancelled or altered in conformity with the above amendment of said resolution, as said Board may determine."

On the argument, counsel for the company stated that the paragraph authorizing cancellation of ex-

isting contracts would be withdrawn and not presented to the meeting, even though the restraint were vacated. The balance of the resolution requires consideration. The company disclaims P. L. 1920, p. 354, as its authority. It counsel say that its directors have ample power under Section 121 of the Corporation Act and under the certificate of incorporation to issue 250,000 shares of stock on such terms as they may determine, but subject to the right of each stockholder to his pro rata share of the new stock; that this resolution is not intended and will not have the effect of authorizing the issuance of stock but is only intended to operate as a waiver by those stockholders who vote for it, of their preemptive right to share in the new issue. The company is not proceeding under P. L. 1926, p. 544, Sec. 16, authorizing stockholders by a two-thirds vote to adopt a by-law waiving the preemptive right. The brief for the company says there is "no intent to deprive any dissenting stockholder of his preemptive right." "Thus the proposed revision of the resolution to sell stock is not intended to bind the entire body of stockholders including dissentients." As I understand counsel, the effect of submitting this resolution to a vote will be the same whether a majority vote for or against it. After a vote, the situation would be this: The directors under the power given by the certificate of incorporation could authorize the issue of 100,000 shares of stock at $10 a share payable, say, in monthly installments. They must offer to all stockholders who have not voted for the resolution, opportunity to subscribe to their quota of the new issue; the directors may then allot to

officers and employees the remaining shares to which the other stockholders would have been entitled if they had not voted for the resolution.

As I read the resolution, and the notice advising stockholders that it would be offered at their meeting, they do not bear the slightest indication that the draftsman intended the effect which counsel state. The provision for the cancellation of the old contracts certainly shows a contrary understanding of the nature of the resolution. A stockholder who has given his proxy in order that his vote may be cast in favor of the resolution or who attends the stockholders' meeting in person and votes for it, would not dream that he was yielding up a valuable right which his fellow stockholders voting "no" would retain. I have carefully considered whether the preliminary restraint should not be modified so as to permit a recording of the votes in favor of the resolution in accordance with counsels' theory that they are mere waivers and at the same time to prevent any declaration by the presiding officer that the resolution was adopted or any entry in the minutes of the company to that effect, in order to make clear that the vote had no effect except that of waiver by the individuals voting for it. This would accomplish the result which the company claims to desire, and also protect complainants. But to permit a vote in the manner suggested, would be grossly unfair to stockholders recorded in the affirmative. The court while granting relief to parties before it, must be careful not to jeopardize the rights of others who have not been heard. I conclude that the restraint should be continued.

Order for Preliminary Injunction and Denying Defendant's Motion to Dismiss

Filed April 17, 1931

This matter having come on for argument upon the return of the order to show cause made and entered herein on the 4th day of March, 1931, as modified by the order made and entered herein on the 9th day of March, 1931, and as continued by the order of adjournment made and entered herein on the 13th day of March, 1931, and the Court having read the affidavits filed on behalf of the parties herein and having heard and considered the arguments of Robert H. McCarter, Esq., of counsel with complainants, and Shelton Pitney, Esq., of counsel with defendant, P. Lorillard Company; and counsel for the defendant company having stated upon the oral argument that the proposal to authorize the cancellation of existing contracts for the sale of stock to employees under the resolutions hereinafter mentioned would be withdrawn and not presented to the meeting, even though the restraint were vacated;

1. IT IS THEREUPON, on this 17th day of April, 1931, on motion of McCarter & English, Solicitors for the Complainants, ORDERED that said order to show cause in the following respects be made absolute, and that the defendant, P. Lorillard Company, its officers, agents and tellers be and they are hereby restrained until the final hearing of this cause, and until permitted by the Court,

(a) from permitting at the adjourned annual meeting of the stockholders of said Company, now adjourned to the 5th of May, 1931, or at any further adjournment thereof, a vote to be had upon the amendment of the existing Bonus By-law of the Company, draft of which proposed amendment accompanied the notice from the Secretary of said Company to its stockholders, dated February 14, 1931, of the holding of the annual meeting of the stockholders of said Company; and

(b) from permitting a vote to be had upon the revision of resolutions heretofore adopted by the stockholders providing for the sale of Common Stock to its employees, a draft of which proposed revision was likewise enclosed in said notice;

2. AND IT IS FURTHER ORDERED that an injunction may issue as hereinabove directed;

3. AND IT IS FURTHER ORDERED that the motion of the defendant company to dismiss the bill of complaint herein be and the same is hereby denied.

Respectfully advised,

JOHN O. BIGELOW,
V. C.

E. R. WALKER,
C.

Notice of Appeal

Filed April 18, 1931

The defendant, P. Lorillard Company, hereby appeals to the Court of Errors and Appeals, in the last resort in all causes, from the whole and every part of the order for preliminary injunction and denying the defendant's motion to dismiss the bill of complaint, made by the Chancellor of this Court in the above entitled cause on the 17th day of April, 1931, on the advice of Vice Chancellor Bigelow.

Dated: April 18, 1931.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with the Defendant, P. Lorillard Company.

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

SHELTON PITNEY,
Of Counsel with the Defendant, P. Lorillard Company.

Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS

Filed April 25, 1931

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of P. Lorillard Company, the defendant-appellant in the above stated cause, respectfully shows that:

Your petitioner finds itself aggrieved by a certain order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice Chancellor Bigelow, bearing date April 17, 1931, in a cause in said Court of Chancery wherein James H. Scott, Jr.; Frederic W. Scott, Jr.; Marion N. Fitzgerald; Buford Scott; Frederic William Scott, Buford Scott, Walter S. Robertson and Edward C. Anderson, partners trading as Scott & Stringfellow; Harry Stern; James T. Parkinson; Robert C. Thornton; Holt Page; John Currie; Henry Baskerville; Ethel Baskerville and Mary V. Lafferty were complainants, and your petitioner was defendant (with other defendants named but not served), in these respects, to wit:

1. That the said order provides and orders that the order to show cause made and entered in the cause on the 4th day of March, 1931, in the following respects be made absolute, and that the de-

fendant, P. Lorillard Company, its officers, agents and tellers be restrained until the final hearing of the cause and until permitted by the Court

(a) from permitting at the adjourned annual meeting of the stockholders of said Company, now adjourned to the 5th day of May, 1931, or at any further adjournment thereof, a vote to be had upon the amendment of the existing bonus by-law of the Company, draft of which proposed amendment accompanied the notice from the Secretary of said Company to its stockholders dated February 14, 1931, of the holding of the annual meeting of the stockholders of the defendant Company; and

(b) from permitting a vote to be had upon the revision of resolutions heretofore adopted by the stockholders providing for the sale of common stock to employees of the defendant Company, a draft of which proposed revision was likewise enclosed with said notice;

2. That the said order provides and orders that an injunction may issue as thereinabove directed; and

3. That the said order provides and orders that the motion of the defendant Company to dismiss the bill of complaint be denied.

And your petitioner appeals from all and every part of the said order of the Chancellor upon the ground that the same is erroneous, for that said order should not have ordered as hereinabove set forth, but should have discharged said order to show cause made and entered on the 4th day of

March, 1931, as modified by the order made and entered on the 9th day of March, 1931, and as continued by the order of adjournment made and entered on the 13th day of March, 1931, and should have vacated the restraint contained in said order to show cause as so modified and continued.

In support of this petition of appeal your petitioner respectfully shows

(1) That the complainants' affidavits did not make a case which justified the Chancellor in enjoining the stockholders of the defendant Company from voting at their annual meeting, and any adjournment thereof, upon the proposed amendment of the said bonus by-law previously adopted by the stockholders, or upon the proposed revision of the resolutions previously adopted by the stockholders authorizing the board of directors to sell common stock of the defendant Company to its employees;

(2) That the complainants failed to show any irreparable injury warranting the issuance of the aforesaid injunction;

(3) That the affidavits read and filed on behalf of the defendant Company required the discharge of the *ex parte* order to show cause made and entered on the 4th day of March, 1931, as modified and continued as aforesaid;

(4) That the bill of complaint shows upon its face that the complainants are not entitled to the aforesaid injunction;

(5) That the said order should have dismissed the bill of complaint upon the motion of the defendant Company;

(6) That the amendment of said bonus by-law and the revision of the said resolutions of the stockholders are both matters concerning the internal affairs of the defendant Company upon which the stockholders are entitled to vote and by their vote to authorize, if they so desire, at a meeting of stockholders; that said bonus by-law had been adopted by the stockholders at their annual meeting in March, 1921, and provided that it could be amended or repealed only by a vote of the stockholders and not by a vote of the board of directors; and said resolutions had been adopted by the stockholders on March 10, 1925, and September 7, 1929, respectively;

(7) That sufficient notice was given for said proposed amendment of said bonus by-law and for said proposed revision of said resolutions to come before said meeting and thereat entitled the stockholders to vote thereon although said meeting had been a special meeting of stockholders;

(8) That said meeting was an annual meeting of the stockholders of the defendant Company; that the by-laws of the defendant Company provided now and always have provided, in conformity with the statute, that at an annual meeting of its stockholders any business may be transacted without notice of the objects of such annual meeting; that said by-laws are binding upon and conclusively presumed to be known by the stockholders of the defendant Company and in and of themselves authorize and make legal a vote by the stockholders at said annual meeting upon said proposed amendment of said bonus by-law and upon said revision of said resolutions without the mention of

said proposed amendment or of said proposed revision in the notice of said annual meeting;

(9) That said order of the Chancellor restraining a vote by the stockholders upon the amendment and revision aforesaid erroneously denied the stockholders their inherent and statutory rights in respect to the by-laws of the defendant Company and in respect to the compensation of its officers and employees, and usurped the judgment and discretion of the stockholders of the defendant Company with respect to the management of its internal affairs.

(10) That for other reasons the said order is erroneous.

Your petitioner therefore prays that 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 other relief in the premises as to this Honorable Court may seem meet.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel
with the Defendant, P.
Lorillard Company.

New Jersey Court of Errors and Appeals

Between JAMES H. SCOTT, JR., and others, *Complainants-Respondents,* *and* P LORILLARD COMPANY, a corporation, *Defendant-Appellant.*	*On Bill, &c.* *On Appeal from Order Granting Preliminary Injunction.*

BRIEF FOR RESPONDENTS.

This is an appeal from an order of the Court of Chancery advised by Vice-Chancellor Bigelow, enjoining P. Lorillard Company from taking or receiving a vote upon a proposed amendment of the so-called bonus by-law and upon a proposed revision of two previous resolutions of its Board of Directors, authorizing the sale of its common stock at prices not less than $30. and $20. a share respectively.

Statement of Facts.

The complainants are at least sixteen in number, holding between 7,000 and 8,000 shares of the common capital stock of P. Lorillard Company, a New Jersey corporation, which they have owned for several years.

On or about the 10th of February 1931, they received from the Secretary of the Company, a notice of the holding of the annual meeting of its stockholders on the 10th day of March 1931:

> "for the election of directors; for the amendment of the existing bonus by-law of the

> Company, draft of which proposed amendment is enclosed; for the revision of resolutions heretofore adopted by the stockholders providing for the sale of common stock of the Company to its employees, draft of which proposed revision is enclosed, and for the transaction of such other business as may properly come before the meeting."

It is obvious that this notice was very much less specific, and altogether different from the description of it contained in the introduction of the appellant's brief.

There accompanied this notice, a draft of the proposed amendment to the existing bonus by-law, which had been passed in 1921. The only evidence involving the complainants with any previous connection with either the bonus by-law, or the resolutions to sell stock, is (p. 87, l. 42) that 9 of the complainants voted for the resolution of September 7, 1929, authorizing the sale of 150,000 shares of common stock at a price of not less than $20. per share. None of this, however, has been in fact sold.

There accompanied this notice, a draft of the proposed amendment to the existing bonus by-law, but no copy of the existing bonus by-law was sent, in order that the effect of the proposed amendment could easily be ascertained. While the proposed revision of the resolutions of the directors authorizing the sale of stock (which had been passed on March 10, 1925 and September 7, 1929) was enclosed, no copy of the two original resolutions of the directors was transmitted, so that the effect of the proposed revision would appear.

A letter from the President also accompanied the notice, which showed that the net profits applicable to common stock had increased from

$545,123.86 for the year 1929, to $2,822,831.02, equivalent to an increase from $.28 per share to $1.47. The letter informed the recipient a copy of the present bonus by-law would be sent to any stockholder on application. No explanation was offered of why it had not been sent. The letter added:

> "The stockholders authorized on March 10, 1925, the sale to employees of 100,000 shares of Common Stock at not less than $30. per share and on September 7, 1929, the sale to employees of an additional 150,000 shares at not less than $20. per share. But unfortunately, though these minimum prices were less at the time than market value, conditions so changed that none of the 150,000 has been sold and, while contracts for the sale of some of the 100,000 shares were made, these contracts are proving burdensome instead of beneficial as they necessarily prevent a disposition by the purchaser for a period of years in order to retain the interest of the purchaser through stock ownership. What is now suggested is the revision (see copy enclosed) of these authorizations, and the contracts made under them, to a price more consonant with market conditions, say not less than $10. per share. Such action is recommended as in keeping with what other companies are doing and necessary to give proper effect to the desire of the stockholders, already expressed, to interest employees in the Company through stock ownership."

It will be noted that the stockholders were kept in entire ignorance of how much of the stock authorized to be sold by the two resolutions had been in fact sold, beyond the statement that "some" of the 100,000 authorization and none of the 150,000 authorization had been sold. There was a complete failure to reveal the terms and conditions of the sale or the names of the vendees,

so that a stockholder in the position of the complainants could intelligently apprehend the full effect of the proposed revision of the sales contracts by which an obligation to pay $10. a share would be substituted for the $30. per share, that an unknown number of and unnamed stockholders had agreed to buy, and could intelligently vote with reference to an amendment of the by-law.

The complainants, Scott & Stringfellow, being in entire ignorance of these matters, and anxious to learn, wrote the President of the Company on the 26th of February (p. 24) requesting information as to the number of shares sold under the old resolution to the President, Vice-Presidents, Secretary, Treasurer, Auditor, Managers, Superintendents, Heads of Departments, Assistants to any of the foregoing, Assistants and Secretaries to the President or any Vice-President; the terms of sale in each case if the terms were different, the amounts which had been paid to the Company therefor, the number of shares sold to employees other than the above, and the terms of sales to them, and the total amount that has been paid to the Company by its employees other than those listed above. The same information was sought in the letter as to any sales made under the authorization of September 7, 1929. No information was given, although (p. 229, l. 14) at the time of writing that letter, there was no suggestion or thought of litigation by any of the complainants.

There then followed a request to inspect the stock list, which was refused until the last minute before it was, under the statute, obliged to be posted, and even then permission to photostat it was refused, although it was too bulky to copy (p. 55, l. 38; p. 187, l. 38).

The bill of complaint herein was filed on the 4th of March disclosing the situation existing; that it was essential that the terms and provisions of such contracts of purchase as had already been made should be ascertained; that the carrying into effect of the proposed resolutions with reference both to the cancellation of contracts and the new stock purchase plan was illegal and improper and if permitted to be effected, the majority voting for it would be entitled to benefit themselves at the expense of the minority; claiming that under the circumstances it would be improper that the stockholders' meeting be held on the date proposed, by the very persons who may so greatly benefit by the adoption of the resolutions that were proposed; calling attention to the proxy which had been sent out by the organization to the stockholders, in which three of the officers who could share in the proposed bonus, and who may have been purchasers under the sales theretofore had, were named as authorized to cast the vote of persons signing the proxies, and asking an order postponing the meeting, which when held should be held under the direction of the Court, and an injunction against the vote upon the proposed amendment to the by-law, and the revision of authority to sell stock; that the persons named in the proxies be restrained from acting thereunder; that the Company be compelled to discover the contracts that had already been made pursuant to the previous resolution to sell at the rate of $30. a share, and an injunction against the cancellation of these contracts.

Upon the filing of this bill, a restraining order issued (p. 58). This order was, on the 9th of March, 1931, modified (p. 64) so as to permit the proposed meeting to proceed with the election of directors.

The meeting was in fact held on the 10th of March, and, against the complainants' protests for the reasons stated, (p. 264) an election of directors was had. Information was again requested by the complainants and by stockholders present not included among the complainants, with reference to the proposed plan, and again refused (p. 225). Mr. Belt, on p. 143, gives as his reason for withholding this information,

> "because of the unfriendly attitude which you have displayed in this matter in seeking to prevent the stockholders from voting on the matters stated in the notice of the annual meeting. This information was not made available at the meeting of March 10, 1931, because the order of the Court allowed only the election of directors to occur at that meeting."

By an order dated March 13, 1931, (p. 65) the date of the holding of the annual meeting was continued to the 5th of May, 1931.

Meantime, the complainants had been furnished with a list of the stockholders, of which there are many thousand, and on March 19, 1931, (p. 129) one of the complainants wrote to Mr. Belt, the Company's President, enclosing a draft of a letter (p. 131) it was proposed by the complainants to send to the stockholders of the Company, requesting any suggestions from him with reference thereto. Mr. Belt made certain suggestions as to its contents, which were adopted (p. 234) and on page 235 is found the letter that was sent out by Messrs. Scott & Stringfellow to the stockholders apprising them of the situation so far as it was then known to them. This letter should be read in its entirety. It, among other things, called the attention of the stockholders to the fact that the effect of the proposed plan, if approved, would be to cancel existing contracts

under which there had been paid, or was due to the Company, approximately $2,200,000, without interest, and to authorize the directors to sell to officers and employees, including themselves, 250,000 shares of the Company's stock at a price approximately $2,750,000. less than its present book value. It added:

> "Under these circumstances, we favor liberal provision for the officers and employees of the Company. We do not feel, however, that the proposed plan is just or equitable. It certainly should not be approved and the existing contracts cancelled, without definite information as to the terms and present status of these contracts and as to the operation of the proposed plan, and who are to be the beneficiaries thereof. This is especially true where all of the directors are officers and employees who would benefit by the proposed plan, and who refuse to give to the stockholders any information either at the meeting of the stockholders or otherwise."

The return day of the order to show cause was, by order dated March 13, 1931, (p. 65) adjourned to March 30, 1931, and pursuant to that order the defendant's original affidavits and exhibits (pp. 67 to 218) were served upon the complainants, and a reply affidavit for the complainants (pp. 219 to 242) was filed.

The affidavits filed by the defendant were very voluminous, and exhibited for the first time, among other things (p. 120), the existing bonus by-law. They also contained a copy of a blank form of the contracts for the purchase of stock (p. 124) that had been made, but the names of the purchasers and the other terms and conditions of their purchase, were omitted therefrom. So the two resolutions dated March 10, 1925 and September 7, 1929, authorizing the sale of stock

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at not less than $30. and $20. per share respectively, were for the first time produced. Up to this time, no information with reference thereto had been accorded the complainants and all of these documents which we had so desired to see were hidden away among a mass of papers, and not in any such convenient form as in the appendix attached to the brief for the appellant.

On the argument of the rule to show cause, counsel for the complainant proceeded upon the hypothesis that the bonus proceedings, past and proposed, had been taken pursuant to the provisions of Chapter 175 of the Laws of 1920, P. L. 354, entitled: "An Act concerning corporations of this State and the participation of their employees and those actively engaged in the conduct of their business in their stock, profits, welfare work or management." By the terms of this Act, a corporation of this State may:

> "upon such terms and conditions as may be determined in the manner hereinafter designated, provide and carry out a plan or plans for any or all of the following purposes:
>
> (a) The issue or the purchase and sale of its capital stock to any or all of its employees and those actively engaged in the conduct of its business, *or to trustees on their behalf* and the payment for such stock in installments or at one time with or without the right to vote thereon pending payment therefor in full, and for aiding any such employees and said other persons in paying for such stock by contributions, compensation for services, or otherwise.
>
> (b) The participation by all or any of its employees and such other persons in the profits of the corporate enterprise or of any branch or division thereof. Such share in such profits shall be regarded as a part of the corporation's legitimate expenses."

The manner designated for the carrying out of the plan is a formulation and resolution by the Board of Directors of a plan or plans, and declaring that in its opinion the adoption thereof is advisable, and calling a meeting of the stockholders to take action thereon. If, at the stockholders' meeting, two-thirds of each class of stockholders present at the meeting shall vote in favor of the adoption of such a plan, it shall become operative, and the same formula is required for an amendment or alteration of the plan.

Everything that was disclosed by the papers indicated that the terms of this Act had been availed of. The stock that had been issued under the previous sale had been issued to a Trustee, who voted upon the same, notwithstanding that it had not been paid for. To the surprise of the complainants and their counsel, who were arguing that this act accented the force of their claims, the counsel for the defendant at the argument disavowed having acted, or proposing to act under the terms of this statute, and claimed that they had relied and expected to rely wholly upon other sections of the Corporation Act.

Obviously the illegality of the plan, if attempted outside the Act of 1920, could not have been urged in our bill, for at the time it was filed, we were entirely ignorant that such procedure was adopted, and as soon as we were apprised thereof, we filed with the Vice-Chancellor, a brief pointing out such illegality. The bill of complaint did however charge (p. 12, l. 19) that the plan was illegal. Mention should be made of the fact that at the argument of the rule to show cause, counsel for the defendant announced the intention of the defendant to withdraw from the proposal the last clause of the proposed revision

of the stockholders' resolution referring to the cancellation of the old contracts. Indeed, Mr. Belt in his affidavit (p. 196) had expressed a similar intention, although he gives the absurd reason therefor (p. 197, l. 41):

> "When it was learned that some stockholders were not only objecting to such modification, but actually urging in a suit that the management was seeking to defraud the company, because the notice had not specifically stated that some of the contracts were held by directors, the purchasers became unwilling to accept a modification."

A day or two after the argument closed, a further affidavit was filed by Mr. H. Laurence Brooke. This document is printed on page 189, and is mistakenly there asserted to have been filed March 24, 1931—obviously an error, for his affidavit was not taken until the first of April. By it, counsel for the complainants were for the first time, by proof, informed that the Act of 1920 had not been, or was not expected to be relied on.

At the hearing of the rule to show cause, the complainants, with permission of the Court, and upon notice to the other side, filed an addition by way of supplement (p. 150) to their original bill, and on March 30, 1931, the answer of the defendant, P. Lorillard Company (p. 281) both to the original bill, and to the addition by way of supplement, was filed.

The opinion of the Vice-Chancellor was filed in due course, and the order (p. 305) from which this appeal was taken, was filed.

ARGUMENT.

I.

There is no authority, other than under Chapter 175 of the Laws of 1920, for the proceedings proposed to be taken, and as the provisions of that act are repudiated and have not been, and are not to be followed, the plan is illegal.

The proposition is to pass, at a stockholders' meeting, an amendment to the bonus by-law (p. 43), and a so-called revision of the resolutions of the directors of March 10, 1925 and September 7, 1929 (p. 47).

Stripped of verbiage, the proposed amendment of the bonus by-law authorizes the Treasurer of the Company, as soon as may be after the end of the year 1931, and of each calendar year thereafter, to ascertain the net profits of the Company for such year, and to pay and distribute 5% thereof as an "extra dividend" to and among those officers and employees of the Company who have both been in the employ and owned common stock of the Company. The word "owned" shall mean and be satisfied only by the registered, legal and beneficial ownership, but the mere pledging of shares as collateral security shall not impair such ownership if otherwise existing, and common stock sold by the Company to an officer or employee shall be deemed to be so owned by the officer or employee, so long as he continues under contract to purchase the stock from the Company, notwithstanding the fact that the stock does not stand of record in the name of, or has not been paid for by such officer or employee. To constitute a basis of participation for any year, the employment must exist for the whole of the year, except should any officer or employee fail to be in the service of the Company for

the whole of any year, he, or his estate, shall nevertheless participate in such payment and distribution for the year in the proportion that the duration of his employment bears to the whole of such year. In order to participate, shares must be owned for the whole duration of the employment during the year, except if such an officer or employee purchase shares during any year from an officer or employee, or from his estate, such shares shall constitute a basis for participation in the proportion that the period during the year which said shares are owned by the purchaser, bears to the whole of the year. The right of participation in any such payment by the President is limited to 7½% of the average issued common stock; by the Vice-President to 5%; by the Secretary, Treasurer, Auditor, Manager, Superinntendent, Head of Department, Assistant to any of the foregoing, or Assistant or Secretaary to the President, or to any Vice-President, to 2½%; and by any other officer or employee to 1%. *However, so far as the year 1931 is concerned, stock acquired by an officer or employee from the company at any time during that year, shall be deemed to have been owned for the whole of that year, notwithstanding the stock does not stand of record in the name of, or has not been paid for by the officer or employee.*

The acts and findings of the Treasurer in ascertaining the net profits shall be binding and conclusive on all parties, and no one claiming thereunder shall have a right to question them, or to any examination of the books, papers or accounts of the Company, nor shall he be entitled to continue with the Company or any claim against the Company, or against any of its officers, or have any right or claim whatever not specifically expressed. The further amendment

or repeal of the proposed by-law may only be had by the action of the stockholders and not the directors. By the express terms of this Act (§2-c) any dissentient may have his stock appraised, and purchased by the Company.

The proposed revision of resolutions, after the excision of the clause therein providing for the cancellation of existing contracts, recites the resolution passed March 10, 1925, authorizing the Board to sell to employees, not exceeding 100,000 shares, at not less than $30. per share, and the resolution passed September 7, 1929, authorizing the Board to sell to employees, not exceeding an additional 150,000 shares, at not less than $20. per share, and provides that they are amended and consolidated so that in lieu thereof the Board shall be and it is authorized to issue and sell, at not less than $10. per share, not exceeding 250,000 shares of the common stock of the Company, without nominal or par value, *to such officers and employees of the Company,* at such times on such terms and in such manner and amounts as may be determined by the said Board at any time, and from time to time.

As shown by the bill, there are presently outstanding, in round figures, 2,000,000 shares of common stock having a book value of $32. a share (exclusive of the value of the good will and the company's brands), and a market value of between $16. and $20., varying from day to day. The complainants are the owners of a large amount of this common stock, and do not belong to the employee or officer class. The proposition is to authorize and sell 250,000 additional shares—about ⅛ of the present outstanding stock—not to all the stockholders, but to a certain class at $10. a share. The loss to the Treasury of the Company, on a market value

of $16., would be about $1,500,000. and on a market value of $20., would be about $2,500,000. Of course, a project, giving to a certain favored class of the stockholders, a right to purchase stock at from $6. to $10. a share below its market value, and to enjoy a special "dividend" thereon in addition to the regular dividend that the owners of the common stock receive, is one that the complainants are gravely interested in seeing that it is both lawful in itself, and legally carried out; for if it is put into effect, the interest of the complainants in the Company will be diluted to the extent above indicated.

No doubt, a plan of rewarding officers and employees of a corporation for services rendered in building up the good will of the corporation, is judicious and beneficient, and the complainants herein are not opposed to that idea. On the contrary, their acquiesence in the propriety of that view was expressly stated, under oath; and further that they were prepared to consider any proper resolutions to that effect, when they were given the information necessary to an intelligent consideration of the subject, and when they were informed as to what disposition had been made in the past of stock issued to officers and employees (p. 224, l. 28).

A corporation has the undoubted power to encourage faithful and energetic service by its officers and employees, by holding out the bait of additional compensation for services to be rendered. The ordinary way that this is accomplished is by offering a reward or bonus, in addition to salary, to zealous employees who, inspired thereby, enthusiastically perform service with the hope of gaining an addition to their fixed salaries. The resultant benefit to the Company therefrom is, in law, sufficient consideration for the agree-

ment to pay the reward, or bonus. The plan, however, must act *in futuro*. A vote of additional compensation, either by way of increase in salary, or bonus, for services already performed under a stipulated salary is a different thing, and unjustifiable. *Godley* v. *Godley & Crandall Co.*, 212 N. Y. 121; 105 N. E. Reporter 818.

There seems to be no answer to the view of the Vice-Chancellor that a plan such as this, which requires the ownership of stock as a prerequisite to the enjoyment of the bonus, regardless altogether of the character of the service rendered by the holder, so long as he is an employee, cannot be sanctioned on any legal or philosophical theory of a bonus.

A consideration of all these facts inevitably leads to the correctness of the Vice-Chancellor's conclusion, that the "dividend" which is payable to the fortunate class who will be afforded the opportunity to purchase this stock, is in fact a dividend and not a bonus, and constitutes the holders of such stock a class not authorized by our law. Undoubtedly a salary for services rendered may be ascertained by calculating a percentage of the profits, but inevitably such a plan has for its basis, compensation for services rendered. Here, where the "dividend" will be apportioned at a certain given percentage of the profits to the fortunate purchaser of the stock the last day of the year, there is no basis whatever for the claim that the "dividend" is in any way different from the ordinary dividend, and it is improper to speak of it as compensation for services. In short, the plan offers a bait in the way of a certain percentage of profits which it frankly calls a "dividend" to such persons (which may include the directors) as shall be selected by them, and who may have owned the

stock entitling them thereto for one day, and may have purchased it at a price far below both its market and book value.

This is particularly true in this case, when for the year 1931, the stock may have been owned for only one day. By this plan, the directors, who are, of course, insiders, would possess information withheld from the general stockholders as to the success, or non-success of the company during the year. As explained by Mr. Belt (p. 86) one of the salient features of the proposed amendment is relatively to increase the bonus in lean years; and so under the plan the insiders, having information as to the profits for the current year, could, at the very last day, avail themselves of the right to buy the stock, and the President and Vice-President, under the quota allowed to each, could absorb the whole authorized bonus. Under the proposed by-law, the President and one Vice-President would be entitled to share in any bonus to be issued to the extent of 12% of the outstanding common stock of the corporation. 12% of the outstanding stock is more than the 250,000 shares that it is proposed to be authorized to issue. Obviously such a plan possesses none of the features underlying a justifiable bonus, and we are not surprised that Mr. Belt in his argumentative affidavit (p. 95, l. 42) justifies the plan as being done

> "in the best interest of the stockholders of the defendant."

Nor are we surprised to find that in his letter to the stockholders (p. 203, l. 30) he said, referring to the past situation, that it

> "has totally deprived the organization in recent years of any benefit from the authority to sell common stock to them and

led me to think it wise and in *the best interest of the stockholders to request a reduction in the minimum price to a figure consonant with the prevailing market price of the stock.*''

He adds (p. 205, l. 12):

> ''It is my earnest belief that the proposed change in the bonus by-law, and the proposed revision of the minimum prices in these resolutions, are both things that should be done in *the best interest of the stockholders.*''

The only justification, legal or philosophical, for a bonus is the resultant benefit to the corporation. It is impossible to see how a plan that authorizes the Company to sell its stock at from six to eight points below the current market value, to a favored few stockholders who may not have owned the stock more than one day, they being employees of the Company, will be of the slightest benefit to anyone except the favored few who may secure the stock.

It must have been because of this feature that ''the organization'' do not propose to avail themselves of the provisions of the Act of 1920, for in that it is expressly provided that the directors shall pass a resolution declaring that in its opinion the adoption of the plan is advisable, *i. e.,* advisable for the Company. Mr. Belt, in speaking of that part of the plan originally outlined, which authorizes the change of the existing contracts from an obligation to pay $30. to $10. per share, says (p. 197, l. 34),

> ''These contracts were authorized because it was thought they would benefit the company by interesting employees in it. As matters have turned out, these contracts are requiring the employees to purchase these shares at $700,000. more than their present market value, *which is a great burden to*

these employees, and therefore most detrimental to the company.''

Inasmuch as the provisions of the Act of 1920 are directly applicable and fully authorize proceedings of this character, that legislative expression of a mode of carrying out a plan of this character is, and must be, alone available.

It is, however, claimed by the appellant that the fourth section of the Act of 1920, P. L. 357 exempts this statute from the otherwise prevalent rule. That section reads:

> ''The privileges and powers conferred by this Act shall be deemed to be in addition to, and independent of any and all powers and authority conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to corporations of this State.''

This contention, however, entirely overlooks the fact that Section 124 of the Corporation Act, which is relied upon as justifying the proposed procedure, was not passed until six years after the Act of 1920, it being Chapter 318 of the Laws of 1926.

But the appellant gleefully repudiates the Act of 1920, and seeks to justify the procedure by Sections 121 and 124 of the General Corporation Act. Section 121 reads as follows:

> ''Every such corporation may issue and may sell its authorized shares without nominal or par value, from time to time, for such consideration as may be prescribed in the certificate of incorporation or any amendment thereof, or, if so provided in the certificate of incorporation, as from time to time may be fixed by the board of directors, or, if no such provision is made in the certificate of incorporation, then with the consent of two thirds of each class of the stockholders having voting powers given at

> a meeting called for that purpose. Such meeting shall be held on such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally or by mail. Any and all shares without nominal or par value issued as permitted by this act shall be deemed fully paid and non-assessable, and the holder of such shares shall not be liable to the corporation or its creditors in respect thereof."

The amended certificate of incorporation of the company contains the clause (p. 114):

> "The authorized shares of this corporation without nominal or par value, may be issued and sold from time to time for such consideration and *upon such terms and conditions as from time to time may be fixed by the Board of Directors.*"

The statute, under which this amendment was made only sanctions including therein the words

> "for such consideration as may be prescribed in the certificate of incorporation or any amendment thereof."

The statute does not sanction or permit the inclusion in the certificate, of any other matter so far as the issue of non par stock is concerned, than the consideration for its issue. Therefore, the additional clause that is contained in the amendment

> "*and upon such terms and conditions* as from time to time may be fixed by the Board of Directors"

is outside the authority of the statute.

Section 124 reads:

> "Upon the issue of capital stock for cash, unless otherwise expressly provided in the certificate of incorporation, or in by-laws adopted by two-thirds in interest of each class of stockholders, every stockholder shall

> have a right (unless waived by him) according to the number of shares held by him to purchase his pro rata proportion of the stock to be issued, at such price (which may be in excess of the par value), within such time and on such terms as shall be fixed and determined by the board of directors; * * *"

The appellant's theory is that a vote by any stockholder for the proposed revision of the resolutions, which would authorize an issuance and sale at not less than $10. per share, not exceeding 250,000 shares of the common stock of this company, without nominal or par value, *to such officers and employees of the company.* at such time and such terms and in such manner and amounts as may be determined by the said Board, at any time and from time to time, would be tantamount to a waiver by the voter of his preemptive right to share in the new issue, and that unless he did so vote and thereby manifest his waiver, his preemptive right, which is admitted to otherwise exist (brief, p. 37) would still exist. Thus, on page 46 of its brief, the appellant says:

> "There was no occasion in 1925 or 1929 to resort to the provisions of the 1920 Act, because there was no intent to deprive any dissenting stockholder of his preemptive right. Nor does the proposed revision of the resolutions contemplate any change in that regard * * *"

See also the affidavit of Brooke, p. 191, l. 32.

The theory is that such of the stockholders as shall not manifest their waiver by voting for the resolution, will have their usual preemptive right in the stock that is to be issued. But this is impossible. The authority for the issue

of 250,000 shares, without nominal or par value, is to be

> "to such officers and employees of the company * * * as the Board at any time may determine."

None of the complainants, and a large proportion of the more than 9,000 stockholders (p. 80) of the company, are neither officers or employees. How, therefore, they would be entitled to share in stock that is only authorized to be issued to employees and officers, we fail to see.

In *Wall* v. *Utah Copper Co.*, 70 N. J. Equity, a leading case, Vice-Chancellor Pitney condemned the issuance by the company of bonds thereafter convertible into stock, on the express ground that thereby present stockholders who would not necessarily be holders of the bonds to be issued, would be deprived of their equity. He showed in his opinion that the stockholder's right to share in a proportionate share of the new issue is

> "that he is entitled to an opportunity to take and pay for one-fifth of the proposed new issue, and that the contract to dispose of all that issue to the Exploration Company infringes on that right."

Appellant has failed to point out, as indeed it is powerless to do, how the respondents, who are neither officers nor employees, will be entitled to share *pro rata* in an increase of 250,000 shares of stock, which is only authorized to be issued to the employees or officers.

Again, as already suggested, there is no authority in the statute, Section 121, which is the sole source of the right to issue stock having no par value, for inserting either in the original or amended certificate of incorporation, the words:

> "on such conditions"

with reference to the proposed issue. The proposed resolution not only fixes the consideration, $10., but it authorizes the directors to issue and sell the stock

> "on such terms and in such manner and amounts as may be fixed by the Board."

and pursuant to this unjustified and illegal authority, it is proposed to issue the stock on credit, payable in installments, to a Trustee, instead of to the owner, etc., etc., none of which terms and conditions find legal sanction in Section 121 (the amended charter provision therefor being unauthorized thereby). On the other hand, the Act of 1920 expressly authorizes the imposition of terms and conditions of this very character, including the issuance to a Trustee, the fixation of credit, etc.

Again, no authority, outside of the Act of 1920, can be found for the feature involved in the plan of separating the ownership and the voting power of the stock. See Mr. Belt's letter to the stockholders (p. 197) in which, among other things, he says, speaking of the period during which the stock that is to be issued remains unpaid for in full:

> "During that period, the shares are placed in the name of an agent designated by the Board of Directors for the purpose, who has all the voting powers and collects and applies to the purchase price all distributions on the stock."

In a word, if this plan is permitted to be carried out, the persons selected as distributees of the so-called bonus stock can make an arrangement to pay therefor on the installment plan, and while they are the owners of the stock, the stock is issued in the name of an agent or trustee, who votes thereon, collects and appropriates the

moneys received by way of bonus to the payment of the purchase price for the issue. This situation must continue for at least seven years (p. 197). The purchaser meantime exercises no control whatever over the conduct of the agent or trustee in voting the stock, or otherwise. A proxy is only permitted to last three years (Section 36 of the Corporation Act), and is revocable. Here, the agent is in no way the representative of the purchaser, nor is he required to vote as the purchaser directs, but occupies an entirely independent position. Moreover, in the event of the designated agent or trustee surrendering his position, the Company (not the purchaser) appoints a substitute agent or trustee, and this situation has in fact taken place under the contracts outstanding (p. 125).

We contend this scheme directly contravenes the principles established by the Court of Chancery in *Cone* v. *Russell*, 48 N. J. Equity 208; *White* v. *Thomas Inflatable Tire Co.*, 52 *Id.* 178; and by this Court in *Warren* v. *Pim*, 66 *Id.* 353. See also *Maddock Sons Co.* v. *Biardot*, 81 *Id.* 233; *Bache* v. *Central Leather Co.*, 78 *Id.* 484.

II.

The notice sent out to the stockholders is insufficient properly to apprise them of what is proposed.

As we have already seen, the notice specifies that the meeting will be

> "for the election of directors; for the amendment of the existing bonus by-law of the Company, draft of which amendment is enclosed; for the revision of resolutions heretofore adopted by the stockholders providing for the sale of common stock of the company to its employees, draft of which

> proposed revision is enclosed, and for the transaction of such other business as may properly come before the meeting."

It is the claim of the appellant that this notice is ample to warn any stockholder that his voting for the proposed resolution amending the existing bonus by-law, and revising the previous resolutions authorizing the sale is sufficient to apprise him that by signing a proxy, or attending and voting in favor of the proposed resolution, he will waive his preemptive right to share in the proposed increase of stock; and is likewise sufficient to apprise every stockholder that by refraining from so voting, either personally or by proxy, he will have preserved such preemptive right. In fact, there is no room for any inference whatever of waiver. A careful stockholder (not an employee or officer) reading the proposed resolution which was sent to him, would conclude that the existence of an alleged preemptive right in the new issue was inconsistent with the terms of the issue, as it was to be wholly distributed to officers or employees.

It is not denied that a stockholder fully apprised of his preemptive right may knowingly waive such right, but there surely should be no doubt of his being fully aware of what he is doing. The retention by a stockholder of his relative power and influence in a corporation, is of the greatest importance, and he cannot be deprived thereof without knowledge of what he is doing. The brief for appellant on page 38 says:

> "To embark on such a program of information to stockholders as this decision would require will make prohibitive the holding of any stockholders' meeting."

We think the Vice-Chancellor was quite justified in the view that a stockholder who attends a meeting and votes for the resolution, would not dream he was yielding up a valuable right which his fellow stockholders voting "no" would retain. It will not suffice to rely on presumption of knowledge. Before one surrenders a right, he must know what he is doing.

Appellant's brief (p. 40) after excusing the want of notice because of the Company's desire to follow the precedents of the two previous resolutions, adds:

> "Of course, however, there is no objection whatever to embodying in the proposed revision such language as will in terms preserve the preemptive right of non-assenting stockholders."

In other words, the proposal is, after the notice and the proposed revision have gone out and the proxies as well, in all of which the proposed resolution is specifically referred to, and indeed accompanied the notice, and proxies have been obtained thereon, to alter or modify the resolution so that it will plainly express what the stockholders who signed the proxies months ago, did not intend to authorize to be done. (See discussion hereinafter.)

But it is contended that no notice was necessary, the meeting being an annual meeting. We think this position is quite untenable.

Section 17 of the Corporation Act of the State of New Jersey, 1930 Sup. to Comp. Stat. 270, says, *inter alia:*

> "* * * At any annual meeting for the election of directors any business may be considered and transacted which may properly be brought before a general meeting of the stockholders, and, if due notice be given,

any business may be considered and transacted which under any of the provisions of this act may be considered and transacted at a special meeting of stockholders. * * *''

Article II of the By-laws of the Company reads as follows:

''Section 1. The annual meeting of the Stockholders of the Corporation for the election of Directors, and such other business as may properly come before the meeting, shall be held at the principal office of the company in New Jersey, on the second Tuesday of March, at eleven o'clock in the forenoon, or at any other hour as the Directors shall appoint before notice of the meeting is given.

''Section 2. Special meetings of the Stockholders, to be held at the principal office of the Company in New Jersey, may be called by the Directors for such purposes as shall be specified by resolution.

''Section 3. Due notice of each annual meeting of the Stockholders shall be given by a written or printed notice signed by the Secretary of the Company and mailed, postage prepaid, at least twenty days prior to each meeting, to each Stockholder of record appearing on the books of the Company at the address given thereon, and public notice of the time and place of holding such meeting shall be published not less than once a week for two successive weeks previous thereto in a daily newspaper of general circulation, published in the City of New York.

''Due notice of each special meeting shall be given also in the manner above provided. The notice shall state the object of the special meeting, and no other business shall be transacted at such meeting; but this provision shall not apply to annual meetings, at which any business may be transacted without notice of the object of such annual meeting.''

Thus, by virtue of the last paragraph of Section 3 of Article II, of the By-laws of the Company, one might argue that any business may be transacted at an annual meeting without the notice stating that this business was to be brought before the meeting. But when Section 1 of Article II of the By-laws is also considered, we see that only such business as may *properly* come before the annual meeting may be taken up.

Also, when Section 17 of the Corporation Act is considered we see that, if the Company could transact every form of business at an annual meeting which might be brought up, as they are claiming is possible under the last paragraph of Section 3 of Article II of the By-laws, then this would be in direct conflict with this Section 17 of the Corporation Act. By this section, the Legislature has said that at the annual meeting, only such business can be considered and transacted as may *properly* be brought before the meeting, and that if it is desired to consider and transact any special business, notice of this special business must be given to all the stockholders, the same as if it were to be considered and transacted at a special meeting of the stockholders.

Now we must consider whether or not, under the decisions, the amendment of the Bonus By-law of the Company and the revision of certain Resolutions previously adopted by the stockholders, relating to the sale of some common stock of the company, which it is claimed, virtually amounted to a waiver by the stockholders of their preemptive right to subscribe to these shares of stock, is such business as may properly come before an annual meeting of the company, without notice by the company of its intent to consider and transact any such business, having

been given to the stockholders. Cook, in his learned treatise on Corporations, in speaking of the notice of a meeting which a corporation must give, at p. 1619 (6th Edition) says:

> "In general, the notice need not specify the business to be considered where the meeting is one prescribed by charter, or where the business is prescribed by charter or statute or by-law, and no other business is to be transacted. But if the meeting is to be held at a time not provided by the charter, the call must specify particularly the time and also the business; *and the better rule is that, where unusual business is to be transacted, even at a regular meeting, the notice of that meeting should state the unusual business.* * * *"

He cites as authority for this statement the leading case of *Jones et al.* v. *Concord & M. R. R. et al.*, 67 N. H. 119, 38 Atl. 120. In that case the notice of the annual meeting stated that the meeting was to be held at a specified place and time

> "to act on the report of the board of directors, to choose a board of directors for the ensuing year, and to transact any other business that may be brought before the meeting."

The first by-law of the Company contained this clause:

> "Any business within the power of the corporation may be transacted at annual meetings, although the subject-matter thereof is not specified in the notice."

Section 6, chap. 148 of the General Laws says that

> "an increase of capital can be made at any meeting called for that purpose."

The Concord R. R. Co. attempted to increase its capital at this annual meeting, when the above notice had been sent out to the stockholders.

The Supreme Court, by Chief Justice Doe, held (p. 126):

> "The statutory provision that the capital can be increased at a meeting called for the purpose is a part of the partnership contract, but, being also a law of the state, it cannot be suspended or repealed by any other power than that of making law. The by-law is to be construed as if it contained a proviso excepting from its regulation of notices of annual meetings the business which cannot be legally done at those meetings without specific notice. If it were construed to allow an increase of capital at a meeting not called for the purpose by the notice, it would be inoperative in this case, because not authorized by section 4, c. 147, Gen. Laws, which affirms the general rule of the common law that corporations may 'adopt by-laws not repugnant to the laws of the state.' The legislative power of altering the law of the land cannot be delegated to the defendants. The grant of power to increase capital 'at any meeting called for the purpose' is a grant limited in an important particular. The limitation is a general law, applicable to an increase of capital under section 10 of the act of 1889, and chapter 3 of the act of 1891. DeLancey *v.* Insurance Co., 52 N. H. 581. If there is a lack of corporate capacity to increase capital at a meeting not called for the purpose, the want cannot be supplied by a by-law. The clause, 'at a meeting called for the purpose,' is to be so construed as to accomplish the legislative design. Its operation can be neither more nor less extensive than the end it was meant to be a means of attaining. If it was intended to be, not an absolute withholding of the power of increasing the capital at a meeting not called for the purpose, but a protection of stockholders against a special danger arising from their not having adequate information of a proposed increase, the question is whether the stockholders have had the intended protection."

So also, when the case of *Jones et al.* v. *Concord & M. R. R.* came up again in 67 N. H. 234, the Supreme Court said:

> "The annual meeting cannot vote an increase of the capital stock unless special notice of that business has been given, even though the by-laws provide that any business may be transacted at the annual meeting without special notice."

Other well-known treatises on Corporations have taken the same view as has Cook. Angell and Ames, in their book on Corporations, § 489, says:

> "Although, when a day certain is appointed for a particular business, no notice may be necessary when that alone is to be transacted, or the mere ordinary affairs of the corporation are to be acted upon, yet when the intention is to do other acts of importance a notice of it is required. The election or a motion of an officer, the making of a by-law, or any act of similar importance on any day not expressly set apart for that particular transaction, is illegal and void."

In a leading book on Building Associations we read, as follows:

> "In the case of the former (corporate meetings), provided for by the laws of the association, all members are bound to take notice of both time and place of holding them, where both are specified by the by-laws, as well as of the usual character of the business to be transacted at such meetings, but where matters not usually brought up at such meetings are to be considered, and where their objects are to be defined by express provision of the by-laws, special notice of the subjects intended to be submitted should be given." End Bldg. Ass'ns (2nd Ed.) § 159.

Morawetz, in his book on Private Corporations, in speaking of this same matter, § 359, says:

> "It is unnecessary to notify the shareholders of the particular business to be brought before an ordinary or general meeting, unless it be of great importance, and of an extraordinary character. In the latter case the object of the meeting must be specified."

In the case of *People's Mutual Insurance Co.* v. *Westcott, et al.,* 14 Gray 440, a meeting of a mutual fire insurance company had been called

> "for the purpose of making alterations in the by-laws, and for the transaction of such business as may come before them;"

and the number of directors, which had not been limited by the by-laws, had been increased at the meeting, and the additional directors were elected. This action was objected to by some stockholders and the Supreme Judical Court of Massachusetts, in an opinion by Hoar, *J.*, held (p. 442):

> "But a decisive objection to the choice of these new directors is, that in the call for the meeting at which they were chosen there was no intimation of any purpose to make such an election. The only specific subject of action named was the alteration of the by-laws. There was no by-law limiting the number of directors, and no new by-law was adopted respecting the number to be chosen, or altering the time of holding the annual meeting. A measure of such importance to the members of the company, which might transfer the whole corporate power to new hands, could not fairly be embraced in the prase 'for the transaction of such business as may come before them.'"

An analogous and well-reasoned case, dealing with this subject, is *Bagley, et al.* v. *Reno Oil Co., et al.*, (1902) 201 Pa. St. 78, 50 Atl. 760. In that

case, the Reno Oil Co. attempted to change its by-laws at the annual meeting of the stockholders, though no notice of the proposed change was given, other than notice to transact the usual business transacted at an annual stockholders' meeting. The Pennsylvania Supreme Court, by BROWN, *J.*, held (p. 761):

> "The by-laws of a corporation are the rule of its life. It comes into being through some general or special statute, with its charter as the evidence of its existence, and one of its necessary and inseparable incidents is the power to make by-laws, which become its private statutes for its own government, unless contrary to the laws of the land. 1 Black, 476; 2 Kent, 278. By its by-laws the management of a corporation's affairs is regulated. * * * By-laws, having once been adopted, become the permanent rule to govern the association's conduct, and every member of it ought to be able to so regard them, and to feel that they will be neither repealed nor amended without notice to him of an intention to do so, even at a regular or annual meeting of the stockholders. Upon the by-laws, as adopted and regulating the affairs of a corporation in which a stockholder has invested his money, he relies for a management as therein provided, and it is not reasonable that even at a regular or annual meeting radical changes should be made without notice to him of such contemplated action. By experience and observation we know that at these regular annual meetings only the general routine of business is transacted, and the corporation passes from one year of its existence into the next with the by-laws regulating the number of its directors and its general management unchanged. A majority of stockholders rarely attend in person. Their proxies are given to attorneys to vote for them on the usual and ordinary questions and matters that arise. If one or more

> stockholders contemplate action of an unusual or extraordinary character, it is but reasonable that their associates should have notice that radical, and what may prove disastrous, changes are contemplated, and that an effort will be made to effect them. If such changes are made with the approval of a majority of the stockholders upon notice to all, they affect and bind all; but they should not be made until all have had an opportunity to be heard by receiving notice of what changes will be attempted, unless provision be made for them in the by-laws."

There is only one case in New Jersey in which this point has arisen and that is the case of *Schwarzwalder* v. *Tegen, et al.,* (1899) 58 N. J. Eq. 319, 325. In that case the complainant was the holder of a policy of insurance in the German Mutual Fire Insurance Company of Newark, N. J., a corporation organized on April 27, 1893, as a mutual fire insurance company under the general laws of this State. He filed a bill against the defendant company and its individual directors, to enjoin them from changing the company from a mutual to a joint stock company. He further alleges that this can only be done at a corporate meeting of which the stockholders or policyholders have notice of the company's intention so to do and not under color of other business which could be transacted at an annual meeting. The Court of Chancery, in an opinion by Emery, *V.-C.,* held (p. 325):

> "This provision for the action of a corporate meeting does not reach, in my judgment, to the present case. The amending, altering or changing of the articles which are referred to in that section cannot be considered to extend to a change without notice of the relation of the policyholders to the stockholders in the management of the company under the charter. Each policy-

> holder had the personal right to be heard and present his views before the general meeting upon the question of the change, and in order that the company at a meeting might make this change, it was necessary that notice be given to the policyholders that this change from a mutual to a stock company was proposed. The general rule is that extraordinary matters and such as cannot be fairly embraced in the transaction of business provided for by the charter itself, cannot be taken at a meeting and unless notice be given. See People's Insurance Co. *v.* Westcott, 14 Gray 440; Morawetz Corp. § 483; Ang. & A. Corp. (10th Ed.) § 489."

This case was later affirmed by this Court in 59 N. J. Equity 589.

Surely, the passage of some resolution, or other action at a meeting, the effect of which will be to waive an individual stockholder's private right in a new issue of stock, is not the transaction of the ordinary affairs of a corporation, and therefore cannot properly be considered at an annual meeting, without notice. It is an infringement upon the private rights of a stockholder, and as such, before it can be accomplished, the stockholder must have been notified of the proposed departure from such ordinary business.

III.

The proxies cannot be voted for a modified or changed resolution.

The excision from the Revision Resolution of the important clause:

> "Resolved further that any contracts now existing for the sale to employees of common stock under said resolution of March 10, 1925, may be by said Board cancelled or altered in conformity with the above amend-

ment of said resolution as said Board may determine''

modifies materially the terms of the proposed revision, a copy of which was sent to every stockholder with the notice that it, including the clause just quoted, was proposed to be voted on, and proxies have been given

> ''to vote as the proxy of the undersigned * * * thereat upon and with respect to * * * the revision of the resolutions heretofore adopted by the stockholders, providing for the sale of common stock of the company to its employees.''

On p. 93, l. 45, Mr. Belt says:

> ''Accordingly, I have determined and definitely conclude and state that the stockholders will not be requested at any meeting held pursuant to such notice, to vote upon the cancellation of any contract which sells shares under the resolution of March 10, 1925 to a director or to anyone else.''

In his letter to the stockholders, which accompanied the notice, dated February 14, 1931 (p. 109) he said:

> ''There is being mailed to you herewith a notice of the annual meeting of stockholders, from which you will see that in addition to the election of directors, there will be considered a revision of the bonus by-law and of the resolutions heretofore passed authorizing the sale of common stock to employees. Copy of the proposed revision of the bonus by-law accompanies the notice. * * * What is now suggested is the revision (see copy enclosed) of these authorizations and the contracts made under them, to a price more consonant with market conditions, say not less than $10 per share. Such action is recommended as in keeping with what other companies are doing, and necessary to give proper effect to the desire of the stockholders. * * *''

We know of no authority sanctioning a change in a resolution after proxies have been solicited and given for voting the unchanged form, particularly when that feature was at the time deemed so essential. The excinded part of the proposed revision may have been the impelling motive for giving the proxy.

The holder of a proxy is the agent of the stockholder giving it, and he must vote in accordance with the instructions. *Bache* v. *Central Leather Company,* 78 Equity 485; 4 Corpus Juris, §1409. At the meeting when the election of directors took place, there were personally present (p. 148) holders of 97,337 shares, whereas 1,329,296 shares (p. 156) were voted, indicating that proxies for 1,231,959 shares were and now are held and are proposed to be voted.

IV.

The refusal of the directors to accord the complainants the information they desired and sought to obtain, before the filing of the bill, was inequitable and improper and justifies the injunction.

The Court's attention in the introduction of this brief (p. ✓) has already been called to the paucity of the information that was accorded the stockholders by the notice and the letter of February 14, 1931, and to the fact that specific information was sought by the complainants on the 26th of February, 1931, in a letter of that date, and before the filing of the bill herein, requesting information as to the number of shares sold under the old resolution, to the President and the other officers, the terms of sale in each case, if the terms were different, the amounts which have been paid to the Company, the number of shares sold to employees, other than the

above, the terms of sales to them, and the total amount that has been paid to the Company by its employees, other than the officers listed in the notice. An answer to all of those inquiries has been and is still purposely withheld. As soon as the complainants received the notice and the President's letter, they at once sought, and have ever since been seeking information touching what had already been done under the resolution of March 1925. They felt that they could not intelligently authorize the adoption of the proposed revision of authority to sell, without being apprised of what had been done under that resolution; who had purchased the stock, who had received bonuses thereunder, and thereby place themselves in a position intelligently to approve or disapprove of a further proposition to issue so large a block as 250,000 shares to an unnamed set of employees, some, if not all of whom possibly and probably are already the owners of stock purchased in 1925 at a price below the then market value of the stock. Again, it is obvious that if the proposed new bonus by law be adopted, whereby payments of bonuses will be made in the future to employees owning common stock, this bonus will be paid in part to those employees who were recipients of the stock sold under the 1925 resolution. It is not only desirable, but apparent that it is necessary, that the stockholders who are asked to vote on this bonus, should know whether the persons who have received the 1925 stock are the same who will, under the new by-law receive the bonus in accordance with its terms. If A or B has been fortunate enough, because of his employment and ownership of certain stock, to have heretofore enjoyed past bonuses and by virtue thereof to share in future bonuses, outside stockholders not entitled to bonuses might well hesitate to

vote for a plan that would enable him further to feather his nest by coming in under the present proposed future issue. In other words, before a non-employee stockholder should be required to vote upon a resolution to issue 250,000 shares of this particular stock at two-thirds of its market value, which will entitle the holder to a bonus which the complainants will not be entitled to enjoy, he should be apprised of what is involved in the plan, who are to be the beneficiaries, whether they have already enjoyed this peculiar privilege, to what extent, and what bonuses they have had, etc. It appears by the affidavit of Mr. Belt (p. 86) that in 1925, $275,-883.86 were paid, and in 1926 $21,978.15.

It must be remembered that the entire Board of Directors—eleven in number—are employees and entitled to purchase this stock and enjoy the bonus. Their action in proposing that a resolution be passed to sell the stock to themselves at a reduced figure, the tenor of which, so long as they are employees, will entitle them to a 5% "dividend" in addition to any income paid by way of regular dividends that they and the other stockholders will receive, places them in the dual position of possibly being both buyer and sell, a position that the law abhors and will not tolerate. Knowledge of the mere fact that they may possibly share is not enough, assuming all the complainants had such knowledge before they filed their bill. Throughout this proceeding, the papers filed on behalf of the defendant are replete with the words "organization." It is the "organization" that is projecting the action at this meeting. Mr. Belt, on page 96, swears:

> "For a good many years, the organization has received no bonus, and has been

> unable to buy any shares of stock from said defendant under the stock resolution, because the price exceeded the market price of said shares. * * * It is hardly possible from an organization standpoint to successfully compete in view of such conditions, unless there be voted such benefits to the organization as those contained in the proposed change in the bonus by-law and the proposed reduction in the minimum price for the sale of stock to the employees of said defendant."

In this situation, the stockholder requested by "the organization" to vote upon these matters is entitled to a frank disclosure by the directors of their interest, or the interest of any of them in the plan. When a stockholder is called upon to vote on a matter in which it appears that some, or all of the directors whose action it is proposed to sanction may be personally interested, he has a right to a full, free and frank disclosure on the part of these directors of their exact relation to the situation. We claim that the situation places the directors in such a position, as that before we are compelled to act, we are entitled to know whether they are, or are not to benefit in the plan, to what extent, and in what way, and it was to obtain information along these lines, before the vote is held, that among other things prompted the present bill. The legal principle underlying this contention is so well settled that citation of authorities is unnecessary. Reference, however, may well be made to the following language of Vice-Chancellor Bentley in the case of *General Investment Co.* v. *American Hide & Leather Co.*, 97 N. J. Equity 214, 230, 233:

> "It would seem but necessary without argument to declare that any adverse interest in a proposed corporate proceeding by one of

the directors should be communicated to the stockholders, where the latter are asked to ratify the same. Any other rule would permit the most ruthless destruction of the rights of the stockholders. Adroit management could frequently prepare a scheme in such innocent guise that ordinary stockholders would not be put upon their guard unless the full discharge of their duties by directors or officers presented the objectionable information which might cause individual stockholders to more carefully scan the proposed plan and seek competent advice thereon. Furthermore, if the law is to remain a scientific co-ordinated body of principles, doctrines and rules, there is no reason that fiduciary agents, such as directors should not be subjected to the underlying directions of the law pertaining to trustees, which they are *sub modo*, as pointed out in the cases already mentioned. There is no rule better established than that ' a trustee is bound to communicate to his beneficiary any knowledge or information he may have obtained affecting the beneficiary's interests, so far as they are embraced in or depend upon the trust or confidential relations. Pom. Eq. Jur. §1077. In the previous opinion it would seem that the position herein assumed was made clear from the citations taken from Mr. Justice Van Syckel's opinion in the *Hodge* case. He was not given to ruminating, in his opinions, on academic questions, and it would seem impossible to read what he there said as to contracts made by a trustee without the knowledge or consent of the *cestui que* trust and its subsequent ratification without concluding that individual stockholders may defeat a plan submitted for confirmation, as the one under consideration. Ratification is impossible in the absence of notice or knowledge."

And again, on page 235:

"It was further urged that sufficient notice of Mr. Tinker's dual interest was ex-

hibited to the stockholders at the time of the meeting, and that it was their duty to be present. But it appears to me self-evident that such notice, considered by the company of sufficient importance to be communicated at the meeting comes then too late. The shareholder has a right at the time his proxy is sought by the corporate officers to rely upon their fairness and the discharge of their confidential duties, and that the unwary public should not be held to the consequences of an act secured by constructive fraud. Neither am I impressed with the argument that constructive notice was contained in the president's letter, to the effect that arrangements had been made with a large banking corporation for securing one-half of the preferred stock to be retired. *Gardner* v. *Butler, supra*, and *Knoop* v. *Bohmrich*, 49 N. J. Eq. 82, are not authorities for any such position as the defendant assumes, and it would be a strange proceeding if the legislature, by the seventeenth section of the General Corporation act were to extend to the stockholders the opportunity to vote by proxy with one hand and with the other behind its back clothe their trustees with the opportunity to betray their trust, without judicial redress for the former. A more inequitable action could not be conceived, and will not be assumed to exist, by one branch of the government against another. * * *

"I consider the contract with the Chase Securities Corporation to be such an integral part of the entire scheme proposed by the directors as to be inseparable and, for reasons I have attempted to explain, the entire matter should remain as it stands. To accede to the request that the defendant or its agents should be permitted to still vote the original proxies unless withdrawn by the stockholders after notice, would permit the defendant to profit by its own wrong. Equitably, it should be compelled to retrace its steps, to the point where the wrong was committed, and, after proceeding to right the

> same by giving the necessary notice and again securing proxies wherever possible, proceed to the meeting upon fair terms with the investors. However, in order that the matter may be brought to a head, I will direct that, if it so pleases, the company may proceed in accordance with the option expressed in the previous opinion, provided notice be mailed to the stockholders on or before January 28, 1925, or else apply, upon two days' notice, to be heard on the fixing of terms, when I will hear arguments. Otherwise, I will advise temporary injunctions, in accordance with my previous opinion, upon amendment, if necessary, of the bill filed by Joel and others, which may be done upon like notice or upon the hearing under any such notice given by the defendant as above provided for."

Everything which Vice-Chancellor Bentley said with respect to the innocent inadvertent failure to give notice in *General Investment Company* v. *American Hide and Leather Company* applies with double force to the case at bar, where every director is adversely affected, and where the information requested was consciously and persistently withheld.

Applying the principles of that case to the case at bar, either action on the proposed modification of the existing bonus system and existing stock purchase plans at the adjourned annual meeting should be permanently enjoined or the meeting should be permitted to be held on terms of new and adequate disclosure, with new requests for proxies, and all proxies previously dated running to the management should be declared ineligible to vote.

What excuses do the directors give for their failure to make this frank and free disclosure? On page 196 at line 30, the President, in his letter of April 1, 1931, says:

> "These contracts have been kept confidential not to withhold information from the stockholder, but for organization reasons, from the very officers and employees who share the benefits thereof. You will well appreciate why all of the organization should not know what is being done in this respect for the various members of it, just as in the case of salaries."

Does that absurd reason justify the withholding even of the names of the persons who have made the contracts and what the terms and conditions of their obligation to pay therefor are? It is of little use to the complainants, anxious to learn the facts, to be furnished (p. 124) with a blank copy of the contracts, leaving out the names of the purchasers. If the situation is harmless, and it is not proposed that these directors shall share beneficially to themselves in the plan, certainly there is no reason why they should not disclose it; and their failure so to do, both to inquiring stockholders before the filing of the bill and in their long affidavits filed in response thereto, is most significant, and leaves but one inevitable conclusion, namely that they do propose themselves beneficially to share, and that they have heretofore likewise beneficially shared. In the letter of April 1, 1931, of the President to the stockholders (p. 197) speaking of the former contracts, information as to which we desired, he says:

> "These contracts were authorized because it was thought they would benefit the Company by interesting employees in it. As matters have turned out, these contracts are requiring the employees to purchase these

> shares at some $700,000 more than their present market value, which is a great burden to these employees, and therefore most detrimental to the Company."

Repeated requests for information upon these points were made of the President and other officers before the suit was commenced (pp. 229, 232) and again at the meeting (pp. 277, 278).

The fact that the proposed action, both as to the by-law and the revision of the resolutions, is amendatory in character, involves a consideration of what has been done before the amendments become effective. Stockholders by voting for these amendments will *pro tanto* review the original by-law and resolution which the amendments affect. The past is, therefore, from every point of view of momentous importance to an inquiring stockholder before he can intelligently vote as to the future. We have already shown that under the plan it will be possible for the President, and one Vice-President to absorb the entire 250,000 shares authorized by the plan. Ought not a stockholder before asked to vote and make possible such a result to be informed as to exactly how much these two officers already have of the 58,983 bonus shares already outstanding?

It is because of the refusal of the directors, who are parties to this suit, to be frank upon this subject and to disclose what they are by law bound to disclose, that this bill was filed—not to prevent the consummation of a fraud, but to prevent the consummation of the plan until disclosure is made. We claim that the situation places the directors in such a position as that before we are compelled to act, we are entitled to know, under the circumstances, whether they are or are not to benefit by the plan, and if so, to what extent, and in what way, and what was

sought and is sought in this case, is an injunction in the meantime to restrain stockholders' action under the plan until such disclosure is made.

As stated in the letter of March 24, 1921, from Buford Scott, one of the respondents, to Mr. Belt (p. 233, l. 31):

> "It seems to me that the stockholders, as owners, are entitled to full and detailed information as to the affairs of their company whenever that information is requested. Especially is this true when the matter as to which information is sought is one with respect to which the officers and employees have a personal interest adverse to that of the stockholders. So long as the attitude is maintained of refusing to give this information, the stockholders of the company are forced to take action to protect their rights in relation thereto."

V.

The injunction restraining the vote was correct.

The respondents' contention is that the proposed proceeding is (a) illegal and without foundation in law; (b) is in fraud of the statute governing the case, and (c) that the vote should not be permitted to be taken until full disclosure is made of the interests of the directors in having the plan adopted. The vote will be self executing, and no further formality in the way of filing with the Secretary of State an additional certificate is required. Under such circumstances, it is the constant practice sanctioned in this Court to grant a preliminary injunction preventing the vote, and in advance of the meeting of the stockholders. *Riker & Son* v. *United Drug Co.*, 79 N. J. Equity 580. In the case of *Grausman* v. *Porto Rican American Tobacco Co.*, 95 N. J. Equity 223, a certificate of amendment

had to be filed with the Secretary of State before the plan objected to became operative, and the opinion of Justice Kalisch, speaking for this Court, says:

> "We must, therefore, assume in the absence of anything to the contrary, that it is the intention of the Board of Directors to comply with the statute and the law as declared by this Court, regulating the matter, and to properly protect the vested rights of stockholders."

So, too, in the case of *Bingham* v. *Savings Investment & Trust Co.*, 102 N. J. Equity 302, the original restraint against the proposed vote of the stockholders was lifted to the extent of permitting the vote to be taken, but restraining the filing of the necessary certificate of merger in the office of the Secretary of State, and in *Outwater* v. *Public Service Corporation*, 103 N. J. Equity 461, Vice-Chancellor Backes, while permitting the vote of the stockholders, especially restrained the filing of the necessary certificate of amendment. Such, too, was the case in *Lonsdale* v. *International Mercantile Marine,* 101 N. J. Eq. 554.

The situation here, however, lacks that safeguard, and the complainants should not be put to the hazard of a vote being had.

We have not discussed the question whether a matter of this kind is such as may find its sole support in a by-law by the stockholders. Under our statute, as the Vice-Chancellor shows, the management and conduct of the affairs of a corporation are expressly left to the Board of Directors, and it would seem that no subject should better or more properly be left to the Board than that of the original or extra compensation to its employees. The mere fact that

among the latter may be some directors, should not upset the entire scheme of corporate management, and hence, as we have seen, the Act of 1920 expressly provided for preliminary action by the directors. Who but they know whether the zeal and conduct of the thousands of employees have been and will be such as to justify extra compensation. The nine thousand stockholders, all but eleven of whom are purposely kept off of the Board, have no knowledge concerning the conduct, zeal and efficiency of the thousands of employees, and therefore, we insist that the view of the Vice-Chancellor that the plan of leaving it entirely to the stockholders to pass upon and determine this matter, is contrary to the language and spirit of our Act. Stockholders undoubtedly are authorized to pass by-laws, but the word "by-law" has a definite meaning, and it does not properly include a matter touching the daily governance of the company, and the requirement that the Board of Directors shall manage the company cannot be eluded by calling the resolution a by-law. Indeed, the effort so to do in this whole procedure evinces the real purpose of the plan to be to appropriate an extra "dividend" to some of the directors, without meeting the stumbling block of having them take part in its determination. The whole life of the scheme owes its origin and existence to the vote of the stockholders. The Treasurer makes the calculations by direction of the stockholders, and the directors also, by authorization of the stockholders, simply take the final step, to choose distributees and the terms of sale.

Absolutely no reason is shown why the respondents should not have the relief accorded them. The resolutions, if permitted, cannot become operative until after the 31st of December,

1931. Meantime the case will have been undoubtedly heard and disposed of on final hearing. The large body of stockholders of this company is entitled to have this question determined, and the directors who pertinaciously refuse to inform the stockholders as to the situation are in no position to insist upon haste.

The attitude of the defendant is that it is *lese majeste* on the part of a large body of the stockholders to feel that they should have a representative on the Board of Directors. It is absolutely untrue that the complainants' views in this regard have in any way prompted this suit. The affidavits for the defense insist that the custom of the company to choose its board from its operatives is *sacro-sanct*, and this regardless of whether they own a substantial amount of stock. Surely, a difference of opinion in this regard does not justify an effort to stigmatize the complainants.

The order appealed from should be affirmed.

Respectfully submitted,

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Counsel for Respondents.

May Term, 1931.

absence of fraud the Court will not substitute its judgment for that of the directors or stockholders in matters concerning the management of the internal affairs of the Corporation. Pertinent cases in other jurisdictions are *Gamble* v. *Queens County Water Co.,* 123 N. Y. 91, 25 N. E. 201 and *Putnam* v. *Juvenile Shoe Corp.* (Mo.) 269 S. W. 593, 40 A. L. R. 1412 noted on our main brief, pages 22-23.

II

The Disclosure Sought

It is well to keep accurately in mind two important considerations in this respect, namely, (1) when the disclosure should be made and (2) what the disclosure should be.

Here we are speaking of the disclosure which should have accompanied the notice of the Annual Meeting—not of the disclosure that should be made at the meeting, when the stockholders consider and vote upon and with respect to the proposed amendment and revision. This is a most important distinction. See *U. S. Steel Corp.* v. *Hodge,* 64 N. J. Eq. 807, 816.

Here there is not involved any failure to disclose that Directors, as well as officers and employees, had participated under the Bonus By-law and stock resolutions and would participate under the proposed amendment and revision thereof respectively, such as was presented in *Genl. Investment Co.* v. *American Hide & Leather Co.,* 97 N. J. Eq. 214. The proposed amendment of the Bonus By-law and the proposed revision of the stock resolutions which accompanied the notice of the Annual Meeting showed on their face that all officers and employees of the Company would be en-

titled to participate under the same and the By-laws had always required the President and five Vice-Presidents to be Directors (R., p. 30). Moreover, it has been the unbroken custom of appellant to have as its Directors only employees who gave their time exclusively to its affairs.

Proof positive of this knowledge by the stockholders is given by the record, in a manner which complainants may not gainsay. Thus, the bill of complaint alleges (R., p. 5) that "the company has eleven directors, all of whom are either officers or employees and who became, therefore, entitled under a by-law hereinafter mentioned to receive a bonus based on the number of shares of Common Stock held by them".

Again, in the letter of Messrs. Scott & Stringfellow to the stockholders, dated March 28th, 1931, they said in reference to the proposed amendment and revision (R., pp. 238-9):

> "It certainly should not be approved and the existing contracts cancelled without definite information as to the terms and present status of these contracts and as to the operation of the proposed plan and who are to be the beneficiaries thereof. *This is especially true where all of the directors are officers and employees who would benefit by the proposed plan* and who refuse to give to the stockholders any information either at the meeting of the stockholders or otherwise."

Nor is there any question here that the stockholders were fully told exactly what the meeting would be asked to consider. Not only did the notice state as objects an amendment of the Bonus By-law and a revision of the stock resolutions, but it enclosed drafts of the resolutions that would be presented for this purpose; and, in addition, the notice

was accompanied by a letter from the President explaining these proposed resolutions and offering to send a copy of the existing Bonus By-law to any requesting stockholder for comparison. The stockholders' resolutions of 1925 and 1929 were recited in the proposed revision of them and the President's letter which accompanied the notice (R., pp. 41, 47).

At page 7 of their brief counsel for complainants intimate that requesting stockholders were not furnished a copy of the existing Bonus By-law. They say this By-law was exhibited for the first time in the affidavits filed on behalf of the Appellant in this suit. This is a misstatement of fact. A copy of the By-laws, including the Bonus By-law, was furnished to the complainants, at their request, prior to the institution of the suit (R., p. 50) and complainants annexed the same as Exhibit 3 to the bill of complaint (R., pp. 26, 35). The bill of complaint on its face shows that it was prepared from a comparison of the existing Bonus By-law and the proposed amendment thereof (R., p. 7).

The only disclosure sought, therefore, is information for past years respecting the sale of shares under the stock resolutions which were to be revised and the bonus that had been paid under the Bonus By-law. The brief of counsel for complainants makes this unmistakably plain. It says (p. 44):

> "The fact that the proposed action, both as to the by-law and the revision of the resolutions, is amendatory in character, involves a consideration of what has been done before the amendments become effective. Stockholders by voting for these amendments will *pro tanto* review the original by-law and resolution which the amendments affect. The past is, therefore,

from every point of view of momentous importance to an inquiring stockholder before he can intelligently vote as to the future."

III

There was no duty to make such disclosures with the notice of the meeting even had the meeting been a special one.

Undoubtedly, the authority on which counsel for complainants most rely to sustain their contention on the above issue is *General Investment Co.* v. *American Hide & Leather Co.*, 97 N. J. Eq. 214. But that decision involved a *special* meeting and would not support their contention even if this were a special meeting. There is a fundamental difference in the nature of the information it is claimed should have accompanied the notice of the meeting.

The instant case is controlled by the *Hodge* case, *supra,* under which no such disclosure had to be made with the notice of the meeting.

In the *General Investment Co.* case the sole ground was that the notice of the special meeting did not disclose to the stockholders the dual interest of Mr. Tinker, namely, that he was a member of the defendant's board of directors and at the same time the president of the Chase Securities Corporation, with which the defendant was making the contract. It was urged that this ground was without merit because the stockholders had constructive notice of Mr. Tinker's dual interest through the statement in the president's letter to the effect that "arrangements had been made with a large banking corporation for securing one-half of the preferred stock to be re-

tired" and that the omission could be cured by giving the information to the stockholders at the time of the meeting. But the Court refused to accede to this argument because it was of opinion that the stockholders had not been informed, even constructively, of the dual interest and that such information came too late at a meeting, when the stockholders would be represented largely by proxies obtained when they did not have such knowledge.

Accordingly, in that case the Vice Chancellor directed a new notice, in which "there shall be given the information already withheld, to wit, the name of Chase Securities Corporation and the fact that Mr. Tinker was a member of the defendant's board of directors and the president of the Chase Securities Corporation at the time the contract was executed, as was done in the *Hodge Case.*"

In the *Hodge Case,* 64 N. J. Eq. 807, the stockholders were asked to approve a contract to be made between the United States Steel Corporation and J. P. Morgan & Company, as a result of which fifteen or more of the twenty-four directors of the Steel Corporation would participate in the underwriting syndicate's compensation. The stockholders were notified only that a syndicate "including some directors" would receive a part of J. P. Morgan & Company's compensation. This Court held that notice sufficient and that, in addition, the stockholders would be presumed to know that J. P. Morgan himself was one of such directors. After citing *Gale* v. *Morris,* 20 N. J. Eq. 285, and *Hazlett* v. *Stephany,* 55 N. J. Eq. 68, and two English Cases to the like effect, Mr. Justice Van Syckel said at page 816:

> "The stockholders of the company are therefore chargeable with express notice that some

> directors were interested in the bankers' contract and *by reasonable inquiry at the meeting* of May 19th they could have ascertained the names and numbers of such directors."

The foregoing makes it perfectly plain that the instant case falls within the *Hodge Case* rather than within the *General Investment Co. Case* and that if the Court requires the notice of the Annual Meeting to make the disclosure desired by complainants it will go a great deal further than Vice Chancellor Bentley went in the *General Investment Co. Case* and expressly contrary to what this Court held in the *Hodge Case.*

For we have already seen that the disclosure sought by complainants was not the *fact* of participation, heretofore or hereafter, by officers and Directors, nor the terms of the proposed amendment and revision (all of which they knew), but an accounting in detail of what has occurred under the Bonus By-law and stock resolutions in past years.

To require such a disclosure in the notice of an Annual Meeting would mean that the Court in the *Hodge Case* should have held the notice fatally defective because it simply said "including some directors" and did not give their individual names and amounts of participation. It would mean in the *General Investment Co. Case* that the order should have required the extent of Mr. Tinker's interest to be disclosed, and not merely the fact of his dual interest, "as in the *Hodge* case."

Such a disclosure in the instant case would have made the notice of the Annual Meeting a volume, and by the mass of the stuff contained in it deprived it of the very benefit it is intended to be to the stockholders, not to mention such a harmful

broadcasting of this confidential information as to the Company's affairs. Nothing of this kind is required. 2 Thompson on Corporations (3d Ed.), Sec. 926, p. 285; *Evans* v. *Boston Heating Co.*, 157 Mass. 37, 41; *Young* v. *South African, etc. Syndicate,* (1896) 2 Ch. D. 268, 276; *Citrus Growers Assn.* v. *Salt River,* (Ariz.) 268 Pac. 773, 777.

IV

Notice Required for an Annual Meeting of Appellant's Stockholders

In an effort to require an expansion of the notice of the Annual Meeting into a document which will give the stockholders the name and amount in past years of each participant under the Bonus By-law and stock resolutions, counsel for complainants have misstated the terms of Section 17 of the General Corporation Act and misconstrued the terms of the By-laws in this respect.

They say of Sec. 17 (p. 27):

> "By this section the Legislature has said that at the annual meeting only such business can be considered and transacted as may *properly* be brought before *the* meeting and that if it is desired to consider and transact *any* special business, notice of this special business must be given to all the stockholders, the same as if it were to be considered and transacted at a special meeting of the stockholders."

Thus they have substituted (1) "before the meeting" for "before a *general* meeting of the stockholders" in this Section and (2) "any special business" for "any business * * * *which under any of the provisions of this Act* may be considered and

transacted at a special meeting of stockholders" in the Section, and thereby completely changed the plain meaning of this Section. As pointed out in our main brief (p. 43) Sec. 17 authorizes the transaction "at any annual meeting" of "any business * * * which may properly be brought before a general meeting" and the requirement of due notice applies only as respects business *"which under any provisions of this Act* may be considered and transacted at a special meeting."

Again, they say of the By-laws (p. 27):

> "But when Sec. 1 of Art. II of the By-laws is also considered we see that only such business as may *properly* come before the annual meeting may be taken up." (Italics theirs.)

It is plain, however, that the word "properly" in Sec. 1 of this Article is defined as respects the objects of an Annual Meeting by that part of Sec. 3 of the Article, which says:

> "The notice shall state the object of the Special Meeting and no other business shall be transacted at such meeting; but this provision shall not apply to Annual Meetings, at which any business may be transacted without notice of the object of such Annual Meeting."

Words could not be clearer, more expressive or more emphatic. They leave nothing to inference or argument. And the stockholders had a perfect right to make this contract (By-law) among themselves, so far as no statute intervened, and there is no intervening statute here. It is nobody's business but their own.

This view is fully supported by the very authorities which counsel for complainants cite to the contrary. Thus *Jones* v. *Concord etc. R. R.,* 67 N. H.

119, from which counsel for complainants quote at such length on pages 28-30 of their brief, while holding, according to the very distinction made in Section 17, that such a by-law must yield to a provision in the statute requiring a special meeting for the contemplated action, otherwise fully approved a by-law almost identical with that in the instant case. It says at page 121:

> "But the defendants contend that, since Art. I of the by-laws of the defendant corporation provides that 'Any business within the power of the corporation may be transacted at annual meetings, although the subject-matter thereof is not specified in the notice for the meeting; but no business shall be transacted at a special meeting excepting that of which the subject-matter is distinctly stated in the notice of the meeting,' it was not necessary to specify in the notice of the annual meeting that action would be taken to increase the stock. To this we say that this by-law is in effect the same as the rule, which prevails generally, that of the stated or general meetings of corporations every stockholder is chargeable with notice, and therefore that no notice of the business to be transacted thereat is necessary. Rorer Railroads 189."

The rule for which we contend is fully approved by Cook on Corporations in Section 594, immediately preceding the section cited by our adversaries, where the author says:

> "If the time and place at which a corporate meeting is to be held and the business to be transacted are distinctly fixed in the charter or by a by-law, this is of itself sufficient notice to all the stockholders and no further call or notice of that meeting is necessary, unless the charter or by-laws require it."

citing, among other cases, *Warner* v. *Mower,* 11 Vt. 385, 393, and *State* v. *Bonnell,* 35 Ohio St. 10, 15, noticed in our main brief (pp. 44-5).

So in 1 Morawetz (2nd ed.), Sec. 479, it is said:

> " * * * But if the charter or by-laws of a company fix the time and place at which regular meetings shall be held, this is itself sufficient notice to all the shareholders, and no further notice is necessary."

Schwarzwalder v. *Tegen, et al.,* (1899) 58 N. J. Eq. 319, 325, is not in point. It involved the right of an insurance company to change from a mutual to a joint stock company. The facts were as stated by the Court:

> "The proceedings for the change are now being taken under the authority of a resolution passed at the meeting held in January, 1899, after the complainant became a member of the company, the meeting being the regular meeting for the election of directors. There is in the charter or by-laws no express provision that this shall be the annual meeting, but this meeting for the election of directors seems to have been taken as the annual meeting. The charter of the company (Art. V., Sec. 1) provides that at the annual or any general meeting of the corporation a resolution may be adopted for amending, altering or changing any of the articles of the charter or for any or all of these purposes, provided always that nothing in this article contained shall be carried into effect without the consent of a majority of the members of said corporation present at such meeting."

It was on this state of facts that the Court held:

> "This provision for the action of a corporate meeting does not reach, in my judgment, to

> the present case. The amending, altering or changing of the articles which are referred to in that section cannot be considered to extend to a change without notice of the relation of the policyholders to the stockholders in the management of the company under the charter."

This decision rests, therefore, on the wording of the provision of the charter and by-laws in this respect and is not an authority where the wording is as broad as that in the instant case.

On appeal (59 N. J. Eq. 589) the decision was affirmed, but on grounds entirely different from those stated by Vice Chancellor Emery. This Court held that such change could not be made in the manner sought because "the power to change a mutual insurance company into a stock company is one which, if possessed at all, must be derived from the statute," and the statute required a meeting called by special notice. This again accentuates the very distinction made by Section 17 of the Act, upon which we rely in part. In addition, this Court was of opinion that under the terms of the statute obtaining when the insurance company had been organized it could not constitutionally so change over the objection of any stockholder.

Peoples Mutual Ins. Co. v. *Westcott,* 14 Gray (Mass.) 440, likewise has no relevancy to an annual meeting. A *special* meeting had been called to make alterations in the by-laws and "for the transaction of such business as may come before them"; and the Court simply held that election of directors was not within the scope of this call.

In *Bagley* v. *Reno Oil Co.,* 201 Pa. St. 78, the Court, in language quoted by counsel for petitioners, expresses a view contrary to what seems to be the prevailing view, as we read the cases. However, that view was merely a *dictum* and the point

here presented was not involved in that case. The facts were that at an annual meeting to elect directors the by-laws had been amended to increase the number of directors from three to five and no notice had been given that such amendment would come before the meeting. As found by the Court, "there was no provision in the by-laws for their amendment" and the statute provided "the members of said corporation may at a meeting to be called for that purpose determine, fix or change the number of directors or trustees that shall thereafter govern its affairs". There was a rule of the company under its contract of consolidation that "an amendment could be made with the written consent of the owners of three-fifths in number of the shares of the company, given in writing, filed with the secretary and recorded in the minutes of the proceedings of the company"; but this had not been done. It will thus be seen that the real decision was that the two ways pointed out of changing the number of directors, namely, by such written consent of stockholders or by a meeting under the statute specially called for the purpose, had not been followed, there was no provision in the by-laws allowing otherwise, and so the increase of the number of directors had been made in a totally unauthorized way, thus making all that the Court said as to notice of unusual business at annual meetings mere *obiter dictum.*

In Fletcher Cyclopedia Corporations, Section 1637, page 2732, the rule is stated to be:

> "Where the charter or by-laws of a corporation fix the time and place at which regular meetings shall be held or they are fixed by usage, this is itself sufficient notice to stockholders or members and no further notice is necessary";

citing, in addition to the cases given in our main brief on this point, *Medical & Surgical Society* v. *Weatherley,* 75 Ala. 248; *Jones* v. *Hilldale Cemetery Society,* 23 Ky. L. Rep. 1486, 65 S. W. 838; *N. Y. Electrical Workers Union* v. *Sullivan,* 122 N. Y. App. Div. 764, 107 N. Y. Supp. 886; *Hill* v. *Atlantic etc. R. Co.,* 143 N. C. 539, 9 L. R. A. (N. S.) 606, 55 S. E. 854; *State* v. *Kreutzer* (Ohio 1919), 126 N. E. 54.

In *Mutual Fire Ins. Co.* v. *Farquhar,* 86 Md. 668, 39 Atl. 527, 528, one of the contentions was that the January meeting which had been called for the purpose of electing directors could not be regarded as a general meeting and therefore no other business could be transacted at it. The Court overruled this contention because it regarded the proof as establishing that by custom or usage this meeting had been made a general meeting, *with the same effect as if it had been made a general meeting by a by-law.* In so doing it said:

> "There is nothing in Section 6, or in the notice required by it, that restricts the meeting from transacting any of the business of the company. The notice provided for by that section is that the election for directors will be held on the first Monday in January, *and a by-law making that meeting an occasion for general business would contain nothing inconsistent with its terms. It would be entirely within the power of the members to pass such a by-law.* The proof shows, we think, that the unbroken custom or usage of the corporation for many years has been to regard the January meeting as an occasion when any of the business of the corporation could be transacted.
>
> "* * * Under these circumstances, it cannot be doubted that all the members understood and must be regarded as having agreed that at these meetings, not only were the directors to

> be elected, but that any other matters in which the company was concerned could be taken up, considered, and definitely passed upon. *A custom or usage so long continued and so invariably pursued has the force of a by-law, and, not being repugnant to any of the provisions of the charter, is valid. Miller* v. *Eschbach, supra; Sampson* v. *Bowdoinham Corp.*, 36 Me. 78; *Insurance Co.* v. *Sanders,* 36 N. H. 252; *State* v. *Conklin,* 34 Wis. 21; *Warner* v. *Mower,* 11 Vt. 385."

So in *Richardson* v. *Railroad Co.,* 44 Vt. 613, 619, the Court said:

> "The orators seek to recover only according to the terms of these two last votes, and the adjustment made and certificates issued in pursuance of them. It is claimed in defense that the vote of the stockholders of February 9, 1853, is not binding because the subject of the vote was not named in the call of the meeting. The answer to this is that Art. 2 of the by-laws provides that 'at the annual meetings any matter may be acted upon within the power of the corporation'."

Surely, upon these authorities and the express language of the By-laws sanctioned by the similar language of Section 17, a notice that at an Annual Meeting the Bonus By-law would be amended and the stock resolutions would be revised is sufficient for all purposes, when accompanied by drafts of the proposed amendment and revision and an explanatory letter from the President, without the necessity of encumbering the notice with a list of each person who has participated under the Bonus By-law and stock resolutions in past years, with the amount of such participation.

Whatever may be the complaint of a stockholder that he did not *at* such Annual Meeting have suffi-

cient information to vote intelligently, there can certainly be no complaint that he was not sufficiently *forewarned* that these two objects would come up and to take such action as he chose with respect thereto. As well might it be insisted that the names of all candidates for the office of Director must be stated in such notice or that there must be attached to the notice a complete statement of the salaries paid in past years because the bonus is by way of extra compensation.

V.

The appellant's refusal to make the disclosure demanded by the complainants was wholly justified.

Complainants rely upon the appellant's refusal to give complainants information regarding the past operation of the existing Bonus By-law and stock resolutions as requested by the complainants (1) at the election of Directors on March 10th, 1931 and (2) theretofore, when, they incorrectly say, "there was no suggestion or thought of any litigation by any of the complainants" (their brief, p. 4).

The appellant was fully justified in then refusing these requests of complainants to disclose the names of the participants and the amounts of their participations in past years under the Bonus By-law and stock resolutions.

The order to show cause entered March 4, 1931, had restrained all action at the meeting on March 10, 1931, "except to adjourn the same" (R., p. 58). The order modifying the restraint specified that the "order of March 4th, 1931, be and it is modified in the following, and in no other respect, to permit the

meeting to proceed with the election of Directors"; and it further provided that "in all other respects the restraint of the order of March 4th, 1931, is continued until the further order of the Court" and "the said meeting after the election of Directors is hereby adjourned until the 21st day of April, 1931, at the same hour and place" (R., p. 64). Because of such orders Mr. Brooke, the Chairman of the meeting on March 10, 1931, correctly ruled that questions and resolutions as respects the Bonus By-law and the stock resolutions were not germane to "the election of Directors or to matters allowed by the order of the Court to be considered" (R., p. 161).

It is not true that "there was no suggestion or thought of any litigation by any of the complainants" (Brief, p. 4) when information as to the stock contracts and Bonus By-law was sought by them. This statement is made in the letter of Mr. F. W. Scott to Mr. Belt written March 24, 1931, some three weeks after the suit had been started (R., pp. 228-9); but the statement is incorrect. The information was requested in a letter dated February 26, 1931 (R., pp. 24-5). Prior to that letter Mr. Belt had received the pen-and-ink letter from Mr. Scott and had had with him the phone conversation of over an hour's duration. These are thus described in Mr. Belt's reply of March 25, 1931 to Mr. Scott which that gentleman has never answered:

> "I recall your first communication on the subject—your pen-and-ink letter to me from Florida. I remember very well your next communication—a telephone conversation of over an hour's duration in the course of which *I cordially invited you to come to the office or to*

> *lunch with me and talk things over, but you declined and persisted in your declaration that the meeting as called was entirely illegal and that you would have it held so* unless I abandoned bringing before the meeting everything but the election of Directors * * *." (R., pp. 244-5.)

As a matter of fact, therefore, complainants were not making these requests in good faith, to determine if they should support or oppose the proposed resolutions. They had already declined an opportunity to get information and had expressed their entire opposition and their purpose to sue regardless of such disclosure. The letter of February 26th, 1931, annexed to the bill of complaint (R., p. 24), was simply sent for the purpose of making a record for the litigation which complainants were about to institute. Likewise were their questions at the meeting on March 10th, at which they knew that only the election of Directors was permissible.

Complainants are simply seeking individual names and amounts which they know to be confidential, and generally recognized as confidential, in order thereby, if possible, to harass the appellant into submitting to their demand for representation on the Board of Directors to get advance and confidential information regarding the Company's affairs (R., p. 198). Their brief (pp. 7-8) incorrectly states that they had not been given "the other terms and conditions" of the stock contracts; these were fully set forth in Mr. Belt's affidavit (R., pp. 86-92) which annexed the form of the contract as Exhibit 6 to be found at page 124 of the record. They had been told that "for the past several years" no bonus had been distributed (R., p. 41); as a matter of fact, only $21,978.15 in 1926, and none

since, (R., p. 86). And they were thoroughly informed (R., pp. 31, 47) that the revision of the stock resolutions was not a "proposition to authorize and sell 250,000 *additional* shares" or "further" shares, as their brief would lead this Court to believe (pp. 13, 37), but merely a reduction in the minimum price for the shares theretofore authorized to be sold by resolutions, for one of which some of these complainants had voted as stockholders (R., p. 87).

The information has been "kept confidential—not to withhold information from the stockholders but, for organization reasons, from the very officers and employees who share the benefits thereof * * * just as in the case of salaries" (R., p. 196). This statement of Mr. Belt has been characterized as "absurd" by the brief for complainants (p. 43), but it is a policy usually observed, for obvious reasons, by business concerns.

To argue, as do the complainants, that this meeting should be enjoined unless such individual names and amounts are divulged to them in advance of the meeting is to usurp and override the right of the majority of the stockholders to have this information kept confidential, if they so desire, just as Mr. Belt's judgment has prompted him to do. The information is not something necessary to the validity of the notice, as in the *General Investment Co.* case. If pertinent at all, it is to be given in answer to the reasonable inquiry of stockholders at the meeting, in conformity with the *Hodge* case, where the stockholders themselves can determine their attitude with respect to the disclosure and its effect on their business.

Since, as we have seen, the notice of the meeting was in all respects sufficient and the meeting has

not yet been held, the very utmost that a Court might do would be to direct that the information be furnished at the meeting to the extent deemed proper, not to enjoin the meeting or require new proxies. All the bill of complaint prays in that respect is a "discovery" (R., p. 15). As this is an appeal from a *preliminary* injunction, all action taken at the meeting, when allowed to be held, could be made subject to the future order of the Court in this cause, if deemed necessary.

VI.

Chapter 175 of the Laws of 1920

(Sections 158-158c of Mr. Chanalis' Pamphlet Copy of the General Corporation Act.)

Counsel for complainants persist in treating the Bonus By-law and the stock resolutions and the proposed amendment and revision thereof respectively as parts of a single plan, which they think should stand or fall together. They feign to have been "entirely ignorant" when the bill was filed that the proposed amendment and revision were not under Chapter 175 of the Laws of 1920 (p. 9). And they assert that the proposed amendment and revision can be legally accomplished only by complying with the terms of that Act. In each of these respects counsel for complainants are in error.

As a matter of fact, the Bonus By-law and the stock resolutions are separate and distinct propositions, have been so treated for the purposes of the meeting and in this litigation, and each must stand or fall on its own merits. The notice stated them

as distinct objects (R., p. 51). The proxy authorized them to be voted upon as distinct objects (R., p. 52). The stockholders may adopt both, either or neither. See *U. S. Steel Corp.* v. *Hodge* (E. & A.), 64 N. J. Eq. 807, 810. In the order from which this appeal is taken the two are treated as entirely distinct proposals for the purpose of the injunction granted (R., p. 306). The petition for appeal so treats them (R., p. 309). Although a like effort to confuse the two matters had been made by our adversaries in the Court below, the Vice Chancellor in his opinion treated the proposed amendment of the Bonus By-law and the proposed revision of the stock resolutions as entirely distinct subjects (R., pp. 296-302).

The 1920 Act expressly requires that the Board of Directors "shall first formulate such plan or plans and pass a resolution declaring that in its opinion the adoption thereof is advisable and shall call a meeting of the stockholders to take action thereon". There is no suggestion in the notice of the Annual Meeting or in any of the papers accompanying the same that the Directors had taken any such action either with respect to the existing Bonus By-law or the existing stock resolutions, or with respect to the proposed amendment and revision of either, or that this Annual Meeting had been called by the Directors as a special meeting for the consideration of a plan formulated or recommended by the Directors under said Act. There was no pretense or appearance of pretense of any compliance with said Act in these respects. On the contrary, complainants knew the Bonus By-law had been adopted by the stockholders in March, 1921, and in terms provided that it "may be amended or repealed only by the action of the stockholders of the

company, and not by the Directors" (R., p. 39). The complainants also knew that the stock resolutions had been passed by the stockholders on March 10, 1925 and September 7, 1929, respectively. This fact was stated in the explanatory letter of the President which accompanied the notice of the Annual Meeting (R., p. 110). The brief of counsel for complainants is in error in stating (p. 2 and p. 11) that these resolutions were adopted by the Directors. Some of the complainants voted as stockholders for the resolution of September 7, 1929 (R., pp. 87-8).

Counsel for complainants seek to avoid the express provision of this Act that it should be deemed "in addition to and independent of" and "not in restriction or limitation of" any other law or laws or powers of a corporation by asserting (1) that Section 124 is a later enactment; (2) that Section 121 gives authority to directors with respect only to "consideration" for shares without par value; (3) that shares sold to the employees may be trusteed only by virtue of the terms of this Chapter, and (4) that only thereby may pre-emptive rights be properly dealt with.

1. The fact that Section 124 is a later enactment is the very circumstance which would make Section 124 the dominant expression of the will of the Legislature were there any inconsistency. If in any respect Section 124 conflicts with the provisions of Chapter 175, it is Section 124 that prevails, not Chapter 175. If they can be construed so as to stand together, it is the duty of the Court to reach that conclusion; otherwise Section 124 to that extent repeals and supersedes Chapter 175.

In *McKee* v. *United States,* 8 Wall. (U. S.) 163, 19 L. ed. 329, 331, the Court said:

> "It is a well settled principle of law that in case of the repugnancy between two statutes the later one must prevail over the former. In that particular in which the prior and the later act cannot consistently stand together, the later act must be taken *pro tanto* as a modification or repeal of the former."

2. The contention that the provisions of the Certificate of Incorporation authorizing the Directors to sell shares without par value "upon such terms and conditions as from time to time may be fixed by the Board of Directors" are outside the authority of the statute because Section 121 says "for such consideration as may be prescribed in the Certificate of Incorporation or any amendment thereof", entirely overlooks Section 124, which provides that in the absence of a contrary provision in the charter or by-laws stockholders may buy their quota of a stock offering

> "at such price (which may be in excess of the par value), within such time and *on such terms as may be fixed and determined by the board of directors.*"

The contention also overlooks the provisions of Section 8, Subdivision VII of the Statute, which says that the Certificate of Incorporation may contain any provision

> "for the regulation of the business and for the conduct of the affairs of the corporation and any provision *creating, defining,* limiting and regulating *the powers* of the corporation, *the directors* and the stockholders, or any class or classes of stockholders, provided such provision be not inconsistent with this Act."

In Dill on Corporations (5th Ed.), pp. 42-3, that author says of this provision:

> "The words 'creating' and 'defining' are new and carry to its logical result the principle laid down in *Ellerman* v. *Chicago Junction Rys. etc. Co.*, 49 N. J. Eq. 217, that the certificate of incorporation is equivalent to a special act of the Legislature. This practically puts it in the power of the incorporators to decide for themselves the powers which the corporation shall have in addition to the powers expressly given by the Act and is, in effect, a delegation to them of the law-making power of the Legislature."

And in *News-R. Co.* v. *Rockingham Pub. Co.*, 118 Va. 140, 86 S. E. 874, the Court said that this clause

> "originated in the New Jersey Corporation Act and was embodied in our Statute *ipsissimis verbis*. It would seem too clear for argument that the words 'creating' and 'defining' as used in the Statute are amply broad to provide for authority in the charter of private business corporations (these words are not used in reference to public service corporations) to do any act not unlawful in itself and not prohibited by the Statute."

See also Smith on New Jersey Corporation Law (2d Ed.) 148 and *Union Trust Co. of Maryland* v. *Carter*, 139 Fed. 717, 725.

An authority to sell "for such consideration" as the Directors may determine in and of itself carries power to the Directors to determine the terms and conditions of the sale. Such language was not intended to limit the Directors to a sale for cash or property or services actually paid, delivered or rendered in whole at the time, as Sec. 124 plainly shows. Without the phraseology of the Certificate of Incorporation, the Directors would have such discretionary power. The Certificate of Incorpora-

tion might certainly include such power to the Directors under Sec. 124 and the very comprehensive authority to that end contained in Section 8, Subdivision VII.

3. The trusteeing of stock is a well-known and well-established legal right. It exists under the laws of all States and under the laws of the State of New Jersey is expressly contemplated and sanctioned by Section 37 of the General Corporation Act. The only limitation is that such trusteeing must not constitute a mere separation of the ownership and voting right.

In *Clowes* v. *Miller,* 60 N. J. Eq. 179, the complainant and the administrator of his deceased partner had organized a corporation and by agreement placed certain shares in the hands of a trustee until divided between them, the administrator meanwhile to have the right to direct the vote of such stock. Later the administrator transferred his interest to the defendant. It was held by Vice Chancellor Emery:

> "The provision of the agreement that the stock held in trust was to be voted at all elections and other meetings, as directed by the administrator, until January 1st, 1901, was, in view of the character of the entire transaction, a part of a transaction for the sale of the stock and a settlement of partnership affairs, a valid provision and not objectionable on any grounds of public policy"; citing cases (p. 186).

And the Court pointed out that such an arrangement was valid so long as the person having the right to direct the vote continued to be an owner of the stock or interested in the stock.

Under this doctrine no valid reason can be seen why a corporation in selling shares to its employees

may not adopt, for its protection as respects collection of the purchase price and disposition of the shares by the employees pending payment, the expedient of placing the shares in the hands of a trustee with authority to collect the purchase price, to receive the distributions thereon and apply them to the purchase price, to pledge the shares to finance the purchase of them, and to vote such shares pending payment therefor. Such an arrangement is perfectly valid as respects other stock transactions, as, for instance, pledging of stock (See Sec. 37 and *Thomas* v. *International Silver Co.,* 72 N. J. Eq. 224). Indeed, such a transaction between a corporation and its employees is tantamount to a pledging by them of the stock for its purchase price through the medium of a trustee selected by the parties for that purpose. For obvious reasons a corporation should have this power to tie employees to it by interesting them in the company through stock ownership. Chapter 175 of the Laws of 1920 expressly recognizes the desirability of this feature in a plan adopted under that Act. But surely it cannot be said that this provision in that law precludes corporations from trusteeing stock sold to employees except as a part of a plan under that act, when the act so plainly says it is in addition to and not in limitation of other laws and powers of a corporation.

4. Nor does Chapter 175 of the Laws of 1920 furnish the only method of dealing with pre-emptive rights. Counsel for petitioners say (p. 21) that

> "Appellant has failed to point out, as indeed it is powerless to do, how the respondents, who are neither officers nor employees, will be entitled to share pro rata in an increase of

250,000 shares of stock which is only authorized to be issued to the employees or officers."

The answer is plain and the solution is simple. It is merely an instance of pre-emptive rights to a particular block of stock being waived by some stockholders and not by others. The situation is contemplated by and falls squarely within Section 124 which, as we have just seen, provides that "every stockholder shall have a right *(unless waived by him)"* to buy his quota of a stock offering "at such price (which may be in excess of the par value), within such time and on such terms as may be fixed and determined by the board of directors". And the situation is worked out, of course, by letting the officers and employees take the share of the assenting stockholders who have waived in advance in their favor, which would allow non-assenting stockholders to get their full share just as if the offering had been to all the stockholders without any such waiver.

Any other conclusion would not only nullify this plain language of Section 124. *It would allow a dissenting stockholder to prevent other stockholders from waiving in favor of officers and employees and thus to control such stockholders in the exercise of what is undoubtedly their own personal prerogative—a result that is altogether inequitable.*

It is thus apparent that Chapter 175 of the Laws of 1920 was not intended as an exclusive means of corporations selling stock or paying bonus to their employees. The purpose of Chapter 175 of the Laws of 1920 was to furnish corporations a method of eliminating objecting stockholders in order to benefit their officers and employees. It accomplished this by requiring a two-thirds vote and the stock of the objecting stockholders to be purchased

at an appraised value. But it expressly refrained from limiting corporations to the method it prescribed by providing that it was in addition to, and independent of, and not in limitation of other laws and powers. It thus refused to require a corporation to run the gauntlet of such an appraisal in order to assist its officers and employees and expressly left open all such other means as it had then or might be conferred upon it by subsequent legislation. Therefore Chapter 175 of the Laws of 1920 has no bearing in this controversy.

VII

The Proxies May Be Voted for Changed Resolutions

Counsel for complainants contend the proxies can be voted only for the specific drafts attached to the notice of the Annual Meeting because a proxy is the agent of the stockholder giving it and he must vote in accordance with the instructions.

We admit the premise, but deny the conclusion sought to be drawn in the instant case, for the reason that there is no such instruction in the proxy given.

Here the change, which counsel for complainants deem sufficient to preclude use of the proxies, is not an *addition* to the proposed revision, and therefore not something of which the stockholders had no knowledge. On the contrary, it is a *withdrawal* of the request for cancellation of the contracts, an adoption of which counsel for complainants assert would have cost the stockholders over two million dollars (Brief, pp. 6-7).

In *Grausman* v. *Porto-Rican American Tobacco Co.,* 95 N. J. Eq. 223, 226, this Court sanctioned voting for a change in a proposed "scheme" (for an amendment of the certificate of incorporation) that had accompanied the notice of the meeting. It said that the complainants "may effect a change therein so as to meet their views."

In *Torbock* v. *Westbury,* (1892) 2 Ch. D. 871, the Court said at pages 873-4:

> "It is contended, however, that owing to the amendment no notice has been given of the resolution actually passed, and that it is therefore invalid as a special resolution.
>
> "This contention is not well founded. The resolution confirmed at the second meeting must no doubt be in the same form as that passed at the first meeting. In other words, the second meeting can only say Aye or No to the resolution passed at the first meeting. But it is not necessary that the resolution passed at the first meeting should be in the identical terms of the resolution specified in the notice. Sect. 51 requires a special resolution to be passed 'at any general meeting of which notice specifying the intention to propose such resolution has been duly given.' If, therefore, proper and sufficient notice of the intention to propose the resolution is given, nothing more is required, and the resolution is not invalidated if, owing to an amendment at the first meeting, the resolution passed is not identical with that of the notice."

The proxy in the instant case is broad in the discretion it confers. It not only authorizes a vote "upon and with respect to" the amendment of the existing Bonus By-law and the revision of the resolutions but "the transaction of such other business as may properly come before said meeting" and "to do all such acts and things as may be necessary or

proper in order to carry out the resolutions adopted and the actions taken by said meeting" (R., p. 52).

The notice itself did not confine the object of the meeting to the terms of the drafts enclosed. These were referred to as "proposed" and it was stated that the meeting was "for the transaction of such other business as may properly come before the meeting" (R., p. 51).

VIII

The Motive Behind This Controversy

We discuss this feature of the instant case because it has been squarely put in issue by the brief of counsel for complainants, and we accept their challenge.

The facts are such in this respect as to amply justify the statement that Messrs. Scott & Stringfellow are the active, dominant spirits in this litigation and that their purpose in it is such that they come into equity with unclean hands. They are prosecuting it for the ulterior object of securing representation on the Board of Directors of the appellant, in order to obtain advance and confidential information of its business and affairs for use in their stock brokerage business. Under the familiar maxim, they are not entitled to any relief in equity. See 1 Pom. Eq. Jur., Sec. 398; 10 R. C. L., Sec. 139, p. 389; and *Cook* v. *Chapman,* 30 N. J. Eq. 114.

On page 43 of their brief complainants characterize as "absurd" the statement of Mr. Belt, the President of appellant, that the contracts selling stock under the stock resolutions have been "kept confidential, not to withhold information from the stock-

holders, but for organization reasons, from the very officers and employees who share the benefits thereof" for the same reasons "as in the case of salaries." And they assert that if "it is not proposed that these directors shall share beneficially to themselves in the plan, certainly there is no reason why they should not disclose it; and their failure to do so * * * is most significant and leaves but one inevitable conclusion, namely, that they do propose themselves beneficially to share and that they have heretofore likewise beneficially shared."

Now it is perfectly apparent that the above assertions are entirely misleading and beside the point, when we remember the allegations of the bill of complaint and the statements in Messrs. Scott & Stringfellow's letter to the stockholders of March 28, 1931 (already quoted, ante p. 4), showing full knowledge on their part that Directors had participated in the Bonus By-law and stock resolutions and would participate under the proposed amendment and revision thereof.

The information which complainants seek is not the *fact* of such participation by Directors (which they well knew), but the individual names and amounts; and the pertinent question as respects motive is whether or not such information is sought by complainants because they honestly think they need it to vote intelligently or is being put forward as a smoke screen to accomplish this ulterior object on the part of the stock brokerage firm of Messrs. Scott & Stringfellow, who are the dominant spirits in this litigation.

In Mr. Belt's letter of April 1st to the stockholders he says (R., p. 193):

> "I regret this controversy because I realize the detrimental effect it may have on the Com-

pany, both with its organization and the public. I made every reasonable effort to prevent it. What I did for this purpose you will see from my letter to Mr. Fred W. Scott, senior member of that firm [Scott & Stringfellow], which is printed in the supplement hereto. I have received no answer to that letter."

The letter to which the above quotation refers will be found at pages 206-8 of the Record and says, in part, as follows:

"I recall your first communication on the subject—your pen-and-ink letter to me from Florida. I remember very well your next communication—a telephone conversation of over an hour's duration, in the course of which I cordially invited you to come to the office or to lunch with me and talk things over, but you declined and persisted in your declaration that the meeting as called was entirely illegal and that you would have it held so unless I abandoned bringing before the meeting everything but the election of directors, although the notice and accompanying papers were then in the hands of the stockholders. In this phone conversation you went so far as to say that we had adopted a record date for determining the stockholders entitled to vote, instead of closing the books, for the sole purpose of influencing the stockholders in favor of the management; and refused to talk with Mr. Brooke, our Secretary and Assistant Counsel, when I asked you to let him explain this to you.

"The next time I saw you was at the Hotel Plaza in New York City, at your request, the day after I had seen your counsel and your son, at their request, in Washington, D. C. Both of these meetings were an effort on my part to come to some amicable understanding. On this occasion you refused to see Mr. Brooke who accompanied me, although I had been willing to talk with your attorney in Washington,

> and I found that you were simply full of dire predictions as to what would happen to me *if I did not accede to your full request of abandonment, as above stated, and did not in addition put on the board one or more representatives agreeable to you.*"

The attitude of Messrs. Scott & Stringfellow was such that Mr. Belt in his affidavit said (R., pp. 70-1):

> "I have carefully considered the bill of complaint in the above entitled cause. Behind it is the desire of Messrs. Scott & Stringfellow, a stock brokerage concern of Richmond, Virginia, for representation on the board of directors of said defendant in order to obtain confidential and advance information about the business and affairs of the said defendant, such as its sales, earnings and expenditures, otherwise unavailable to them."

Complainants have never denied this charge by Mr. Belt. On the contrary, they have practically confessed its correctness. Mr. Buford Scott, one of the complainants and a member of the firm of Scott & Stringfellow, in his subsequent affidavit said (R., pp. 219-20):

> "It is denied that, as alleged in the said affidavit of Mr. Belt, this action of myself and the other complainants in the cause before the Court was actuated *solely* by a desire on our part for representation on the Board of Directors of the defendant corporation, in order to obtain confidential and advance information about the business and affairs of the said defendant."

Counsel for complainants seek to minimize this attitude when they say at page 48 of their brief:

> "The attitude of the defendant is that it is *lese majeste* on the part of a large body of the stockholders to feel that they should have a representative on the Board of Directors. It is absolutely untrue that the complainants' views in this regard have in any way prompted this suit. The affidavits for the defense insist that the custom of the company to choose its board from its operatives is *sacro-sanct,* and this regardless of whether they own a substantial amount of stock. Surely, a difference of opinion in this regard does not justify an effort to stigmatize the complainants."

But, as complainants well know, the appellant does not oppose any *bona fide* desire of the stockholders for representation on the Board. In Mr. Belt's letter of March 25, 1931 to Mr. Fred W. Scott he said (R., pp. 206-7):

> "I have no objection to any inferences the stockholders may draw from the real facts, *nor have I any objection to stockholders desiring representation on the Board.* But I do object to stockholders receiving statements such as were contained in your circular letter and to *litigation such as you have brought following a refusal to put on the Board one or more directors agreeable to you."*

So the pertinent inquiry continues, why did Mr. Buford Scott find it necessary to qualify his denial with the all-important word *"solely",* which Mr. Belt did not use? Manifestly, because without such qualification Mr. Scott could not deny under oath. What Mr. Scott should have denied, if he could, was that his firm would in any way be a party to getting confidential and advance information of appellant's affairs, instead of saying that he was not "actuated solely" by such a motive.

Consistent with this motive, complainants have not been content with simply opposing the amendment of the Bonus By-law and the revision of the stock resolutions. Notwithstanding at the election of the Directors complainants nominated only one Director (James H. Scott, Jr.) who received but 219,082 votes, while each of the eleven re-elected received over 1,333,000 votes out of a possible 1,998,780 votes (R., pp. 76, 163), complainants are contesting said election in this suit (R., p. 250) and also by an attempted proceeding under Section 42 of the General Corporation Act (R., p. 255). In the latter proceeding they are asking the production of books showing salaries to officers and employees, group insurance benefits, etc.

They are seeking proxies which include the election of Directors and not only for all adjournments of the Annual Meeting, but for any special, general or adjourned meeting held within six months from the date of the proxy and any and all adjournments thereof (R., p. 204).

Mr. Buford Scott in his affidavit has now gone so far as to say (R., p. 220) that it is "desirable and proper that a *majority* of said Board should be composed of persons who are not officers or employees of the corporation".

And Mr. Belt had to warn the stockholders in his letter of April 1, 1931 (R., p. 204) that:

> *"The real issue is whether or not you will trust your investment in the Company to Messrs. Scott & Stringfellow or to the present management. The proxy which that firm asks you to send it goes much further than questions of bonus or sale of shares. It authorizes your shares to be voted with respect to the election of Directors and for the transaction of any other business that may properly come up*

in any general, special or adjourned meeting held within six months after you give it and any adjournment thereof. The execution of such a proxy would be placing your Company in the hands of that stock brokerage firm."

May Term, 1931.

Respectfully submitted,

PITNEY, HARDIN & SKINNER,
Solicitors for the Defendant-Appellant,
P. Lorillard Company.

MERRITT LANE,
SHELTON PITNEY,
MAHLON PITNEY,
Of Counsel.

New Jersey Court of Errors and Appeals

Between JAMES H. SCOTT, JR., and others, *Complainants-Respondents,* *and* P. LORILLARD COMPANY, a corporation, *Defendant-Appellant.*	On Bill, Etc. On Appeal from Order in Chancery Granting Preliminary Injunction, Etc. Bill to Enjoin Annual Meeting of Stockholders. Heard below before Bigelow, V. C.

BRIEF OF DEFENDANT-APPELLANT.

(Italics ours unless otherwise noted)

The Case.

This is an appeal from an order granting a preliminary injunction against the stockholders of the appellant company voting at their 1931 annual meeting (*a*) upon a proposed amendment of their existing bonus by-law and (*b*) upon a revision of their earlier resolutions authorizing the sale of a given number of shares of common stock to employees of the company, and denying the defendant's motion to dismiss the bill of complaint. The order in question will be found at pages 305-306 of the state of case.* Vice Chancellor Bigelow's opinion immediately precedes the order, commenc-

* References to page numbers hereinafter made are to the State of Case unless otherwise noted.

ing at page 295, and is reported in 108 N. J. Eq. 153.

The annual meeting of the stockholders of the appellant, P. Lorillard Company, was duly called for March 10, 1931, pursuant to the by-laws (fixing the second Tuesday of March for the annual meeting, p. 27). In accordance with the provisions of Section 36 of the General Corporation Act the appellant's by-laws also provide, (p. 28), that in lieu of closing the stock transfer books a record date may be fixed by the Board to determine the stockholders entitled to notice of and to vote at meetings of stockholders. Pursuant to the statute and by-law the Board of Directors had duly fixed 3 P. M. on February 9, 1931, as the record date for the annual meeting to be held on March 10. Notice of the annual meeting was thereupon duly mailed and published in accordance with the statute and by-laws (pp. 147-8).

For convenience we print an appendix to this brief in which we set forth the Secretary's notice of the meeting, the existing bonus by-law (Article XII) adopted by the stockholders in 1921, the proposed amendment of said by-law as printed and mailed to the stockholders with the notice of the meeting, the dividend by-law (Article X), the existing resolutions of the stockholders authorizing sale of common stock to employees adopted on March 10, 1925 and September 7, 1929, respectively, the proposed revision of said resolutions and the letter of the appellant's President accompanying the notice. All of these papers are a part of the record and are printed at various points in the state of case but may be turned to more readily under this cover.

The notice of the annual meeting to be held on March 10, 1931, stated the objects thereof to be:

(1) the election of directors;

(2) amendment of the existing bonus by-law of the Company (adopted at the annual meeting of stockholders in March 1921 and providing that it could be "amended or repealed only by the action of the stockholders of the Company and not by the directors");

(3) revision of resolutions adopted by the stockholders providing for the sale of common stock of the Company to its employees. The first of said resolutions was adopted on March 10, 1925, and the second on September 7, 1929. Each of them authorized the Board of Directors to sell shares of common stock of the appellant to such of its employees, at such times, in such amounts and on such terms as the Board might from time to time determine for that purpose, subject only to the provision in the earlier resolution that such sales might not exceed 100,000 shares to be sold at not less than $30 per share and, in the second resolution, that such sales might not exceed an additional 150,000 shares to be sold at not less than $20 per share.

(4) authority to the Board to cancel or alter the existing contracts selling common stock to employees under said resolution of March 10, 1925. This item of business has now been definitely withdrawn and need not be further considered on this appeal.

The complainants filed their bill on March 4, 1931, for the purpose of preventing any and all action by the stockholders at their coming annual meeting. Upon the filing of the bill, verified only by the affidavit of the complainant, James H. Scott, Jr., (pages 54 to 57), an *ex parte* order to show cause

was made dated said 4th day of March. That order will be found at page 58. It required the appellant to show cause on the 16th day of March why the prayer of the bill should not be granted, meanwhile restrained all voting at said annual meeting "except to adjourn the same" and postponed the meeting "until the further order of the Court." Upon our motion to modify the restraint the order of March 4th was modified by an order made on the 9th, but only to the extent of permitting the election of directors on the following day (page 64), and otherwise continuing the restraint contained in the order of the 4th and adjourning the meeting following the election of directors until the 21st day of April.

As permitted by the modifying order, the election of directors was held on March 10, with the result that the then eleven directors of the appellant were reelected.

By consent order entered on March 13 the return day of the order to show cause was adjourned from the 16th to the 30th of March. The annual meeting was correspondingly adjourned for a further period of two weeks, from the 21st day of April until the 5th day of May, and the temporary restraint, as modified, was continued in effect (page 65). Further adjournments were authorized to keep the meeting alive pending the further order of the Court.

Following the argument upon the return of the order to show cause, as so modified and continued, the same was made absolute, for the reasons stated in Vice Chancellor Bigelow's opinion, as respects voting upon the proposed amendment of the bonus by-law and voting upon the proposed revision of the two earlier resolutions of the stockholders (pp. 305-306).

Specifically, in addition to denying the appellant's motion to dismiss the bill, the order enjoins the appellant, its officers, agents and tellers, until the final hearing and until permitted by the Court

> "(a) from permitting at the adjourned annual meeting of the stockholders of said Company, now adjourned to the 5th of May, 1931, or at any further adjournment thereof, a vote to be had upon the amendment of the existing Bonus By-law of the Company, draft of which proposed amendment accompanied the notice from the Secretary of said Company to its stockholders, dated February 14, 1931, of the holding of the annual meeting of the stockholders of said Company; and
>
> "(b) from permitting a vote to be had upon the revision of resolutions heretofore adopted by the stockholders providing for the sale of Common Stock to its employees, a draft of which proposed revision was likewise enclosed in said notice;"

We have not made detailed reference in this preliminary statement to the allegations of the bill of complaint or to the affidavits filed in the court below upon the return of the order to show cause because the Vice Chancellor's opinion upon which the order under review was predicated relied upon certain grounds which had neither been raised by the bill of complaint or the affidavits nor argued by counsel. Appropriate references to those papers will be made during the course of that part of our argument which deals with the points made by our adversaries below.

We shall first deal with the reasons relied upon by the Vice Chancellor for enjoining the stockholders from voting and thereafter discuss briefly the arguments of counsel below in support of the bill.

The Vice Chancellor filed his opinion on April 14, the result of which was the order filed on April 17 granting the preliminary injunction and denying the appellant's motion to dismiss the bill of complaint, from which order this appeal has been taken. (Notice of appeal filed April 18, page 307; petition of appeal filed April 25, page 308).

Questions Involved.

The questions involved are (a) whether a preliminary injunction should have been granted against the stockholders voting at their regular Annual Meeting upon the proposed amendment of their existing Bonus By-law; (b) whether a preliminary injunction should have been granted against the stockholders voting at their regular Annual Meeting upon a proposed revision of resolutions theretofore adopted by them, authorizing the sale of Common Stock to employees; (c) whether the bill of complaint should not have been dismissed.

Grounds of Appeal Relied On.

We rely upon all the grounds of appeal set forth in our petition of appeal (pp. 310-312), which may be thus summarized for the convenience of the Court:

(1) The complainants did not in their bill or otherwise show any facts or irreparable injury warranting the issuance of a preliminary injunction;

(2) On the contrary, the bill of complaint on its face, as well as the affidavits filed on behalf of

the defendant company, required a dissolution of interlocutory restraint and a dismissal of the complaint;

(3) The existing Bonus By-law is a valid expression of the will of the stockholders as respects the internal affairs of their Company, which they had a right by their vote at their Annual Meeting to amend in the particulars proposed; the restraint of their vote in this respect was a substitution by the Court of its judgment for that of the stockholders as respects such internal affairs;

(4) The resolutions of March 10, 1925 and September 7, 1929, authorizing sale of Common Stock to employees, were valid expressions of the will of the stockholders as respects the internal affairs of their Company, which they had a right to revise by their vote at their Annual Meeting in the single respect proposed; the restraint of the vote of the stockholders on the proposed revision erroneously interfered with the stockholders as respects their personal rights and the internal affairs of their Company in this respect;

(5) The notice given would have been sufficient to allow a vote of stockholders on both the proposed amendment of the Bonus By-law and the proposed revision of said resolutions had said meeting been a *special* meeting;

(6) Said meeting was an *annual* meeting, at which the By-laws of the appellant have always provided any business may be transacted, "without notice of the object of such annual meeting". This By-law and the similar provision of Section 17 of the General Corporation Act are binding upon the stockholders and rendered unnecessary any mention of the proposed amendment or of the proposed

revision to entitle the stockholders to vote thereon at such Annual Meeting;

(7) Said order enjoining a vote by the stockholders upon the amendment and revision aforesaid erroneously denied the stockholders their inherent and statutory rights in respect to the By-laws of the defendant company and in respect to the compensation of its officers and employees, and usurped the judgment and discretion of the stockholders of the defendant Company with respect to the management of its internal affairs.

ARGUMENT.

POINT I.

The existing Bonus By-law is a valid expression of the will of the stockholders. They have a right to amend the same by their vote in the respects proposed. In restraining this vote the Court erroneously usurped the prerogatives of the stockholders with respect to the internal affairs of their Company.

A. *It is settled that the stockholders of a corporation may lawfully provide for bonus payments to employees;*

B. *In the absence of fraud, oppression or such capriciousness as to justify an inference of fraud, by a majority upon a minority of stockholders, the method of distributing the payments, like the method of computing their amount, is a matter of internal management with which the courts will not interfere;*

C. *The stockholders had inherent and statutory power to adopt the appellant's bonus by-law and have like power, which they expressly reserved exclusively to themselves, to amend it as proposed;*

D. *The Court of Chancery, in granting the preliminary injunction against the stockholders' vote upon the proposed amendment, usurped the prerogatives of the stockholders.*

Under these headings, which will be discussed together, we deal with the reasons given by the learned Vice Chancellor for granting a preliminary injunction against a vote by the stockholders upon the proposed amendment of their bonus by-law.

Neither the complainants nor the learned Vice Chancellor have impugned the legality of bonus systems generally or doubted their wisdom. Indeed, the Vice Chancellor expressed the opinion that:

> "Officers and employees might participate in a bonus in proportion to their salaries or the length of their service with the corporation or in accordance with the quality of their work or the results produced by them or in some other manner related to the employment" (p. 298).

And the Vice Chancellor said of the purpose of the appellant's plan:

> " * * * it might be said that encouraging officers and employees to purchase stock will tie them to the company and so promote efficiency of operations. *This is a most desirable end* * * * " (p. 299).

In the opinion of Vice Chancellor Backes, filed April 14, 1931, in *Berendt* v. *Bethlehem Steel Corporation,* 108 N. J. Eq. 148, he said:

> "The bonus system is not impugned; * * * the policy of stimulating effort, efficiency and accomplishment by extra compensation is as old as the company itself."

And in *Booth* v. *Beattie,* 95 N. J. Eq. 776, Vice Chancellor Backes, upon whose opinion this Court affirmed the decree below, said:

> "The resolution is not as a matter of law invalid because the salary (additional compensation) is contingent upon the dividends. Nor is it objectionable as a business proposition. The method is practical, commercially sound and obtains in corporate management."

An excellent discussion of the subject will also be found in *Putnam* v. *Juvenile Shoe Corporation* (Mo.) 269 S. W. 593, 40 A. L. R. 1412. The Board had authorized the payment of $50,000 to employees in amounts as determined by the president. After these payments had been made a stockholder brought a suit in equity to compel their restoration. Later a special meeting of stockholders was called at which the bonus resolution and payment were ratified by a large majority. The Court upheld the ratification, adopting the opinion of Blair, P. J., who said:

> "The payment of a bonus, when appropriately authorized, is not in itself a fraud upon dissenting stockholders. The practice has become common among large employers, and tends to stimulate loyalty, faithfulness, activity and energy in employees, and gives them a real interest in the business of the employers beyond the extent of such qualities reasonably to be expected where a definite and unfluctuating compensation is all such employees have a right to anticipate. The natural tendency of a

bonus, the amount of which is contingent upon profits is to build up that quality known as esprit de corps. It tends to produce profits beyond what may otherwise be expected. Hence, where the amount of the bonus is not unreasonably large, it tends to increase the profits of the employer as well as the compensation of the employed. It tends to make employees less wasteful of materials and more watchful of the interests of the employer, because employees thereby conserve their own interest. It tends to hold experienced employees in service, when employment is plentiful and employees scarce, and to reduce the annual turnover of labor, thereby making for permanence in the personnel of employees, avoids the necessity of and loss incurred in training new recruits, and builds up the average skill and efficiency of those employed. All these things are to the evident advantage of the employer.

"In one form or another the practice is hoary with age. The farmer knows that the promise to his hired man of quitting early and the loan of a horse and buggy for the evening will produce a big day's work long before the early quitting time. The teacher knows that the prospect of a half holiday, if there are no cases of tardiness, will insure the early arrival at school of every pupil, upon pain of the displeasure of his fellow students. So it is in industry. An expected bonus based upon results tends to discourage and expose employees who are inclined to be lazy, thoughtless, inefficient and wasteful. Experience has demonstrated that the payment of a bonus works to the benefit of employer and employee alike and, within reasonable bounds, is advantageous to stockholders of corporations employing labor. Courts have recognized this and have given their sanction to the practice. *Roberts* v. *Mays Mills,* 184 N. C. 406, 28 A. L. R. 338, 114 S. E. 530; *Zwolanek* v. *Baker Mfg. Co.,* 150 Wis. 517;

44 L. R. A. (N. S.) 1214, 769 Ann. Cas., 1914 A, 793."

In *Booth* v. *Beattie,* 95 N. J. Eq. 776, the resolution of the stockholders under review, as appears from the papers on appeal, was as follows:

> "On motion the following resolution was adopted:
>
> "RESOLVED that in addition to the present compensation paid to the officers of the Beattie Mfg. Co. further compensation shall be paid them collectively as follows:
>
> "An amount equal to one-quarter of 1% on the capital stock of the company for every 1% dividend declared out of earnings, in excess of 25%, such amount to be equally divided among the officers."

The foregoing resolution was sustained notwithstanding it also appears from the papers on appeal that the bonus was to be *equally* divided among officers who were severally in receipt of regular compensation in widely varying amounts, and had been employed for varying periods of time, and without regard to the separate results of their individual efforts or ability; and further that the vote of said officers, as stockholders, had been necessary to the passage of the resolution by a vote of 1,600 to 1,400 shares, the officers to be so benefited having voted 527 shares in its favor.

In *Church* v. *Harnit,* 35 Fed. (2d) 499, 501, the Circuit Court of Appeals for the sixth circuit said:

> "Under the foregoing circumstances, we are of the opinion that the corporation, in whose interest and on whose behalf the plaintiff files this bill, must be held to have contracted with the defendants for the payment of reasonable additional compensation or bonus. There is

nothing illegal or against public policy in such a contract. (Citing cases.")

See also *Minch* v. *Minch & Eisenbrey Co.*, 139 Md. 426, 115 Atl. 702; *Harker* v. *Ralston Purina Co.* (C. C. A., 7th), 45 Fed. (2d) 929; *Parsil* v. *Onyx Hosiery, Inc.*, 220 App. Div. 148, 221 N. Y. Sup. 174, affirmed 246 N. Y. 559, 159 N. E. 651.

No case has been found in which the granting of a bonus to employees has been held to be beyond the powers of a going solvent corporation.

The Appellant's Bonus Plan.

The appellant's bonus is extra compensation for employment.

The existing bonus by-law is printed at page iii of the appendix hereto and was adopted by the stockholders at their annual meeting in March, 1921. It provides that it may be amended or repealed only by the stockholders. Its essential terms, in substance, are:

The amount of bonus to be paid under it is 15% of "net profits" for the particular year involved which are computed by deducting from the income of the Company all costs, expenses, taxes, interest, depreciation, preferred dividends and $1.50 per share of common stock and 7% on the surplus.

The distribution of this amount is "to and among those officers and employees of the Company who have both been in the employ and owned stock of the Company for the whole of such year as an extra dividend upon and in the proportion among such officers and employees of such shares of common stock thus owned by them respectively", with provisions for pro-rating where the employment is for a part only of the year.

The computation and distribution are committed wholly to the treasurer. Neither the directors nor any other officer may interfere.

To prevent inordinate ownership of stock by any one person, the number of shares that may be owned for participation are limited to 3⅓% for the president, 2% for a vice-president, 1% for certain other officers and heads of departments, and one-half of 1% for all others of the average common stock outstanding for the particular year involved.

Proposed Changes in the Bonus By-Law.

The proposed amendment is likewise printed in the appendix at page vi.

The nature of the bonus by-law would not be altered thereby. The proposed changes are:

(1) Elimination of the deduction of $1.50 per common share and 7% on surplus in computing "net profits";

(2) Taking 5% instead of 15% of "net profits" as the distributable amount.

(3) Making the limit of stock ownership 7½% instead of 3⅓% for the president, 5% instead of 2% for a vice-president, 2% instead of 1% for certain other officers and heads of departments, and 1% instead of one-half of 1% for all others.

The changes stated in (1) and (2) above were explained in the President's letter (appendix p. xii), who pointed out that for several years past the terms of the existing by-law have precluded any bonus distribution and that this "has proven quite a handicap in view of the bonus being paid by other companies."

The changes proposed in (3) above do not increase the amount of bonus to be distributed. They affect only the division among the officers and employees; and it will be observed that the increases are substantially proportionate for each of the several classes of officers and employees involved; there is no discrimination in such increases. These increases are suggested because the depreciation in the market value of the common stock of appellant had been such that the larger percentages of said shares can be purchased and owned now for practically the same amount of money as could the smaller percentages of said shares when the present by-law was adopted, and there seems to be no good reason why officers and employees should not be attracted to invest as much money in the common stock of appellant in this manner now as was the attraction by the present bonus by-law when it was adopted. (See p. 83.)

The Bonus Is Not a "Dividend".

The appellant has not contended and does not contend that the bonus can be sustained as a dividend. It is not a dividend, and was not intended to be.

The by-laws, like statutes, must be construed so as to constitute a harmonious whole. Article X of the by-laws (appendix p. x) deals with "dividends" and commits their declaration and payment to the directors. The Sixth Article of the Certificate of Incorporation (p. 117) likewise commits the power of declaring and paying dividends to the directors. Section 47 of the General Corporation Act applies therefore and commits the subject of dividends to the directors. Article XII of the by-

laws, on the other hand (appendix p. iii) deals with "bonus to officers and employees" and commits the ascertainment and distribution of the bonus solely to the treasurer, excluding all power of the Board of Directors in that respect. Such are the captions and contents of these respective articles of the by-laws and they unmistakably show that the distribution under Article XII is not a dividend.

"Net profits" out of which the distribution may be made under Article XII is entirely different from the "net profits" out of which a dividend may be declared on the common stock. For an ascertainment of "net profits" for the purpose of a distribution under Article XII, there must be deducted $1.50 per share of common stock and 7% on the surplus, deductions which need not be made for the purpose of a dividend on the common stock.

Only those officers and employees who have been in the employ of the Company during the year in question may participate. Mere ownership of common stock is not sufficient.

Such officers and employees may not participate on the basis of all shares owned, without limit, though they do participate upon the basis of the whole time during the year they have been in the employ of the Company. They are limited as to ownership of shares for participation while there is no limitation as to duration of employment for participation. These conditions make it clear that compensation for employment is the basic reason for the bonus by-law.

The distribution of bonus is not a uniform percentage on the shares owned by the officers and employees. It varies from year to year because simply their part of a percentage of the "net profits" computed as above stated for the particular

year involved. Thus the bonus is conformed to the results of the labors of the officers and employees for the year involved.

Furthermore, the limitation on ownership of shares varies with the degree of importance of the employment. Thus the President is limited to 3⅓%; a Vice-President to 2%; certain other officers and heads of departments to 1% and all others to one-half of 1% of the average number of shares of common stock outstanding.

Manifestly, therefore, when Article XII provides that the bonus should be paid and distributed "to and among those officers and employees of the Company who have both been in the employ and owned common stock of the Company * * * as an extra dividend upon and in the proportion among such officers and employees of such shares of common stock thus owned by them respectively," it was not using the word "dividend" in a technical sense, but merely in its sense of "a sum of money, resulting from division, to be distributed according to some fixed scheme; as a dividend of assets pro rata among creditors" (Funk & Wagnall's Standard Dictionary). It is a word of "very general and indefinite meaning" and has "in law no particular or technical signification." (In *re Hinckle Brewing Co.*, 124 Fed. 702, 703; *University* v. *N. C. R. Co.*, 76 N. C. 103, 105; 22 Am. Rep. 671.)

In *Henry* v. *Great Northern Railway Co.*, 27 L. J., Ch. 1, 17, Knight Bruce, *L. J.*, said:

> "The word 'dividend' carries no spell with it. Applicable to various subjects, it is not intelligible without knowing the matter to which it is meant as referring, and, of course, where there is a context, it is liable to be affected by that context."

In *Scase* v. *Gillette-Herzog Mfg. Co.,* 55 Minn. 349, 57 N. W. 58, the corporation had agreed to pay the employee (an accountant) a fixed salary and in addition 2½% of the dividend declared each year, with the provision that before any dividend should be declared there should be made certain deductions for "improvements and extensions". The Court held that the word "dividend" in the contract had not been used in a technical sense but meant 2½% of the net profits, and entitled the employee to the same whether or not a dividend was in fact declared. Judge Vanderburgh, for the Court, said at page 59:

> " * * * Strictly, the terms 'dividend declared' refer to an actual distribution of profits. But their application here must be considered in connection with the situation of the parties, and the nature of the case, as presented by the record, and especially in connection with the explanatory clauses in the concluding portion of the agreement, by which it appears the plaintiff's percentage is to be based on the net profits for each year, after deducting expenditures for 'improvements and extensions' for that year * * *. The percentage paid him by way of compensation must be treated as part of the expenses to be ascertained and excluded from the sum of the net profits which would be subject to be divided among the stockholders."

Having regard for the *context* of the bonus by-law and of that by-law read in conjunction with the "dividend" by-law (Article X), the word "dividend", as employed in the "bonus by-law" (Article XII) meant simply the payment of the extra compensation to officers and employees by way of bonus.

A case quite in point is *Minch* v. *Minch etc. Co.*, (1921) 139 Md. 426, 115 Atl. 702, in which additional compensation had been voted by the directors in proportion to their holdings of common stock. The Court ruled:

> "That the salaries of the four stockholders in a corporation, all four of whom were also officers thereof, were increased in proportion to the amounts of stock held by them, does not make such increases a corporate dividend."

In so doing the Court said:

> "There is no evidence and it is not charged that the salaries paid appellees are fraudulent or excessive. *Even if the increase of salaries was purposely made proportionate to the amount of stock held by the officers respectively, that of itself would not change the character of the payments.*"

And in *Bennett* v. *Millville Improvement Co.*, 67 N. J. L. 320, this Court said at page 323:

> "It is admitted that the president impliedly promised the plaintiff to pay him one-sixth of the net profits of the operations of the defendant as part of his compensation, but it is claimed that, by reason of section 47 of the Revised Corporation act, neither the president nor the corporation itself could thus dispose of the profits. But this one-sixth proposed to be given to the plaintiff was salary—payment for services—and not part of the profits, but part of the expenses of the business, and if the corporation had permitted its president, by acquiescence or by receiving the benefit of the services for which this one-sixth was to pay, to make this arrangement, then the corporation was as much bound to pay this as to pay the fixed salary which they had agreed to. The profits referred to in section 47 were not ascertained until this expense of conducting the business had been paid."

In *Parsil* v. *Onyx Hosiery, Inc.*, 220 App. Div. 148, 221 N. Y. Sup. 174, affirmed 246 N. Y. 559, 159 N. E. 651, the defendant had guaranteed the plaintiff that in addition to his regular salary of $16,000 the dividends on his stock would amount to $9,000. The Court said:

> "That the item of $9,000 constitutes an integral part of the agreed total annual compensation of $25,000 and was not to be paid as an incident to the ownership of stock, is evidenced by the fact that *it is to be paid only during the term of the employment.*"

Likewise is the appellant's bonus payable only "during the term of the employment".

It had never been urged or suggested, prior to Vice Chancellor Bigelow's opinion, that the by-law is *ultra vires* because providing "for the payment of dividends on a part of the common stock." Essentially the bonus is extra compensation to officers and employees.

The Basis of the Bonus By-law Is Reasonable and Proper.

The Vice Chancellor held improper stock ownership as a basis for bonus solely because he thought the basis should be something more "related to the employment," such as salaries, length of service or quality or results of work (p. 298). In so doing the Vice Chancellor entirely misconceived the ground upon which alone Courts of Chancery will interfere. He merely substituted his judgment for that of the stockholders in the management of their internal affairs—a thing a Court of Chancery will never do.

To call into action a court of equity there must be shown to exist an element of bad faith, dishonest desire or ulterior motive which it is asked to prevent in order that a selfish majority may not defraud a minority. Any other doctrine would set up the judgment of the Courts as determinative of the honest business policies of a corporation. Whether or not stock ownership was sufficiently related to justify its use as a basis, in the absence of fraud, which is entirely wanting here, is a matter entirely in the discretion of the stockholders themselves.

In *Booth* v. *Beattie,* 95 N. J. Eq., at p. 777, the Court sustained a bonus in addition to regular compensation, although it was to be equally divided between those whose salary and length of service varied, without regard to the separate results of their individual efforts or ability. The Court said:

> "The resolution was not brought about by unfair or improper means and is not illegal or fraudulent or oppressive toward stockholders who oppose it. The resolution was passed in good faith and in the interest of the company. That the managing directors by whose voting it was passed share in the advantages is an unobjectionable incident. The cases I have examined, which are apparently adverse to this view, all have a taint of fraud or a touch of overreaching."

Indeed, it is well settled in New Jersey that, in the absence of fraud, of which there is no claim here, the courts will not substitute their judgment for that of directors or stockholders as respects the internal management of the corporation. See *General Investment Co.* v. *American Hide & Leather Co.,* 97 N. J. Eq. 214, 220; *Berger* v. *United States*

Steel Corp., 63 N. J. Eq. 809; *Park* v. *Grant Locomotive Works,* 40 N. J. Eq. 114, 121, affirmed 45 N. J. Eq. 244; and *Robotham* v. *Prudential Insurance Co.,* 64 N. J. Eq. 673, 700.

In *Gamble* v. *Queens County Water Co.,* 123 N. Y. 91, 25 N. E. 201, Mr. Justice Peckham said

> "To warrant the interposition of the Court in favor of minority stockholders in a corporation or joint-stock association, as against the contemplated action of the majority, where such action is within the corporate powers, a case must be made out which plainly shows that such action is so far opposed to the true interests of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests but that he must have acted with an intent to subserve some outside purpose, regardless of the consequences to the company and in a manner inconsistent with its interests. *Otherwise the court might be called upon to balance probabilities of profitable results to arise from the carrying out of the one or the other of different plans proposed by or on behalf of different shareholders in a corporation, and to decree the adoption of that line of policy which seemed to it to promise the best results, or at least to enjoin the carrying out of the opposite policy. This is no business for any court to follow."*

In *Lewis* v. *Matthews,* 161 N. Y. App. Div. 107, 112-3, 146 N. Y. Sup. 424 (quoted with approval in *Kranich* v. *Bach,* 209 N. Y. App. Div. 52, 57, 204 N. Y. Sup. 320), the Court said respecting the fixing of salaries:

> "The question was one of the internal management of the corporation, whether the officers whom the corporation had elected should receive compensation for the services that they

> rendered to the corporation and the amount of compensation to be paid. It was a question to be determined by the corporation itself, in which neither the people of the state nor the public generally were at all interested, and the stockholders as those interested in the disposition of the property of the corporation were entitled to determine what, if any, compensation should be paid to the officers. Certainly a minority stockholder disagreeing with the majority had no right to impose his will upon the majority and control the action of the corporation."

In *Putnam* v. *Juvenile Shoe Corporation, supra,* the court said:

> "Courts will not substitute their judgment for that of the stockholders as to what is good business policy, or as to what is beneficial to the corporation, absent evidence of fraud upon minority stockholders."

In *Young* v. *United States M. & T. Co.,* 214 N. Y. 279, 108 N. E. 418, the Court upheld an agreement by directors of a corporation, which had been ratified by the stockholders, to pay the president thereof 5% of the net profits of the business as compensation in addition to his fixed salary.

Such payment is not a gift or gratuity, but a compensation for services to be rendered. One who gives his services under an agreement of his employer to pay a bonus in addition to a regular salary may maintain an action and recover his proportionate share thereof. *Bennett* v. *Millville* (E. & A.), 67 N. J. L. 320; *Paine* v. *United States,* 269 Fed. 871; *Roberts* v. *Mays Mills,* 184 N. C. 406, 114 S. E. 530, 28 A. L. R. 338; *Zwolanek* v. *Baker Manufacturing Co.,* 150 Wis. 517, 137 N. W. 769, 44 L. R. A. (N. S.) 1214.

The nature and extent of a bonus and when, how and to whom it shall be paid are necessarily questions of internal management. They relate entirely to what the stockholders wish to do for their own employees with their own property. In *Lillard* v. *Oil, Paint & Drug Co.,* 70 N. J. Eq. 197, 206, Vice Chancellor Emery observed that the compensation questioned in the case had been fixed directly, and in the first instance, by the stockholders, either by resolution or by-law, and said:

> "The regulation of official duties and the salaries therefor is a proper subject of by-laws within the power of stockholders under the statute. * * *"

Minds differ with respect to the various essentials of a bonus, both as respects its ascertainment and distribution. Many reasons may be shown why stockholders would prefer stock ownership as a basis of participation rather than the bases preferred by the Vice Chancellor.

For instance, take the salary basis. There is no more delicate or complicated situation in the affairs of any company than the question of salaries, taken abstractly and relatively. And it will at once be seen that this situation will be greatly aggravated by predicating the bonus upon it, because thereby those charged with the duty of fixing salaries will be tempted to raise their own salaries and keep down the salaries of others in order that their participation in the bonus may be greater. As, generally speaking, the President or the Board of Directors fixes these salaries, such a method of bonus has the weakness of leaving the bonus to the discretion of interested persons.

Take, again, length of service with the Company. Very frequently, and certainly ultimately, length

of service decreases rather than increases efficiency. It is a standard to which many exceptions and objections apply. Many a man who has been with a company only several years is much more efficient than one who has been with the company much longer. It may be that the President is the newcomer and those in minor positions are the "old fellows." Such a standard would have to give free play to discretion in order to conform it to such undoubted circumstances.

Take, again, the kind of employment. Those connected with the Lorillard Company may be roughly divided into the Executive Department, the Leaf Handling Department, the Manufacturing Department and the Selling Department. In distributing a bonus on the basis of the kind of work done by the employee, how shall these departments be rated with respect to each other? If it be said that the kind of work means, first the President, then the Vice Presidents, third other officers and heads of departments, and thereafter the residue of the employees, we ask how that would essentially differ from the bonus by-law under discussion in its limitation of the stock that may be held by these several officers or employees for purposes of participation.

We make these comments on the bases which the Vice Chancellor preferred, not to show that they may not be adopted by the stockholders as such bases if they so desire, but simply to show that they do not so differ from the basis of stock ownership as to make them proper and the latter so arbitrary as that the stockholders may not even vote with respect to such a basis if they desire.

Vice Chancellor Bigelow objects that the proposed bonus in the instant case might favor a

less efficient clerk who happened to own shares at the expense of a more efficient man doing like work and of riper experience, but without stock. Like instances might be cited in any plan of extra compensation. The example given is a commonplace of life. The argument is equally applicable to the facts which existed in *Booth* v. *Beattie* (set forth *supra* at p. 12), where the extra compensation was based upon the percentage of dividends paid and was divided equally among certain officers without regard to individual salaries, length of service or results produced. See also *Costello* v. *Thomas Cusack Co.,* 96 N. J. Eq. 95, where the bonus was fixed at a certain percentage of the net profits of the corporation. The Court said at page 100:

> "* * * the great weight of the testimony is that the compensation fixed by the board of directors was reasonable and the method proper, and I do not recall any evidence on the part of the complainants to the contrary."

Booth v. *Gross Kelley & Co.,* 238 Pac. (N. Mex.) 829, 41 A. L. R. 868; *Scase* v. *Gillette-Herzog Mfg. Co.,* 55 Minn. 349, 57 N. W. 58; and *Clapp* v. *Astor,* 2 Edw. Ch. (N. Y.) 379, are interesting as illustrative of another method by which bonuses to employees are sometimes admeasured, namely, by the amount of dividends paid to stockholders. These cases also show that sometimes bonuses to employees are spoken of as "dividends" even though they are not strictly dividends.

The Vice Chancellor admits that stock ownership by employees is a good thing for the Company and its stockholders because it might "tie them to the Company and so promote efficiency of operations" and furnish a better market for the stock. He says: "This is a most desirable end."

Many corporations have agreed with the Vice Chancellor in thinking this a desirable end. They have provided ways and means to facilitate the acquisition by officers and employees of stock in the company. See *Harker* v. *Ralston Purina Co.*, (C. C. A. 7th) 45 Fed. (2d) 929. The stockholders of the Lorillard Company have twice seen fit to authorize the Board of Directors to sell shares of Common Stock to employees of the Company at less than the prevailing market price of such shares at the time those resolutions were passed.

We do not see, therefore, how the union of these two things, to wit, a cash bonus predicated upon stock ownership, both of which are admittedly desirable, brings about a result so improper or illegal as that a court of equity may forbid all vote of the stockholders with respect thereto. It cannot be wrong for the stockholders through such a means thus to accomplish a dual benefit to the Company, namely: to encourage officers and employees (a) to make the 15% bonus as large as possible and (b) to invest largely in the company whose earnings they wish thus to increase.

The distribution based on ownership of stock gives *all* employees an incentive to thrift and to investment in the enterprise with which they are most familiar. It stimulates effort to that end beyond any inducement of salary or wage; for by acquiring stock they not only receive dividends but may also be entitled to extra compensation for their services in proportion to their stake. Those employees who do not respond to the promise of that reward may presumably be spared, while the ambitious are perenially discovered to the management. Having acquired stock the incentive is to hold the job against all intra-corporate competition,

in good times and in bad, and at the same time to expend the last ounce of energy to advance the position of the appellant Company in its bitter competition with its three larger competitors.

We have found no case which supports the Vice Chancellor's view that the appellant's method of distributing the bonus renders it in any way unreasonable or improper. The opinion of the Court below has overridden the judgment of the stockholders of the appellant expressed in the by-law of 1921, and ever since acquiesced in by all, including the complainants (see the Vice Chancellor's opinion at p. 300).

The Stockholders Had Inherent and Statutory Power to Adopt and Amend the Appellant's Bonus By-law.

The Vice Chancellor thought the power in a corporation under Section 1 (V and VI) of the General Corporation Act to make by-laws and fix compensation had been transferred to the directors by the provision of Section 12 that "the business of every corporation shall be managed by its directors." Herein the Vice Chancellor erred. He entirely overlooked the inherent powers of the stockholders and the fact that the power to make by-laws is not embraced in Section 12. The power to make by-laws is exclusively covered by Section 11, to which the Vice Chancellor makes no reference and which we cannot suppose Section 12 was intended to limit or repeal. Section 11 provides that "the power to make and alter by-laws shall be in the stockholders", thus confirming and perpetuating in statutory form the inherent power of the stockholders in this respect. See *Taylor* v. *Gris-*

wold, 14 N. J. L. 222, at p. 230 and also *Leggett* v. *N. J. Co.,* (1832) 1 N. J. Eq. 541; *Kearney* v. *Andrews,* (1854) 10 N. J. Eq. 70; and *State* v. *Morristown,* 33 N. J. L. 57.

While this section authorizes a corporation in its certificate of incorporation to "confer that power upon the directors", it further expressly provides that "by-laws made by the directors under power so conferred may be altered or repealed by the stockholders", thus continuing the power of the stockholders with respect to the by-laws, notwithstanding the Directors may thus be authorized to make or alter by-laws.

It follows that the addition by the stockholders in March, 1921, of Article XII to the by-laws of the defendant was a valid, legal act on the part of the stockholders, whether that be regarded as the making of a by-law by the stockholders or the amendment of the by-laws which then existed. Altering or amending by-laws includes addition thereto as well as changes therein or subtraction therefrom. *In re Griffing Iron Co.,* (1898) 63 N. J. L. 168, affirmed 63 N. J. L. 357.

This subject of alteration and amendment was thoroughly considered in *Ex parte Woo Jan,* 228 Fed. 927, where our position is shown to be fully sustained by the authorities.

The power to amend the Constitution of the United States includes the power to make additions thereto, such as the Prohibition Amendment. *Rhode Island* v. *Palmer,* 253 U. S. 350, 64 L. ed. 946; *Christian Feigenspan, Inc.* v. *Bodine,* 264 Fed. 186, 190.

Since the Bonus By-law has remained in unquestioned force from its adoption in March, 1921, with the Directors participating in the payment of bonus

thereunder, it must now be regarded as having been adopted by the Directors, even if adoption by the Directors were necessary to its validity, and thereby to have become a part of the by-laws of the defendant and as such capable of being altered or repealed by the stockholders under the express provisions of Section 11. See *Graebner* v. *Post,* 119 Wis. 392, 96 N. W. 783, 100 Am. S. R. 890; *Home State Bank* v. *Ratcliffe* (Iowa), 220 N. W. 36, 37; *Bank of Holly Springs* v. *Pinson,* 58 Miss. 421.

In *Booth* v. *Beattie,* 95 N. J. Eq. 776, the resolution was adopted by the stockholders and established extra compensation for managing directors. It was held valid by this Court for the reasons expressed in the opinion of Vice Chancellor Backes, notwithstanding the votes of the stockholder-directors benefitted thereby were essential to its adoption. That is an element not present in the case at bar.

The same Vice Chancellor, in his recent opinion in *Berendt* v. *Bethlehem Steel Corp.,* 108 N. J. Eq. 148, had before him a bonus by-law adopted by the stockholders of that corporation and he took pains to point out that "the bonus system is not impugned; the attack is upon its administration".

The case of *Lillard* v. *Oil, Paint and Drug Co.,* 70 N. J. Eq. 197 (1905), was a suit by minority stockholders to have declared void a by-law fixing the salary of the president at an excessive figure, and to compel the repayment to the corporation of excessive amounts paid to the president under authority of said by-law. The by-law had been adopted upon the vote of the stockholder who owned or controlled most of the corporation's stock and who thereupon had himself elected as president by the directors. While the complainant prevailed

(except as to salary paid prior to the filing of the bill), the relief was granted upon the ground that the majority stockholder had used his control to accomplish what, in effect, was an appropriation of the corporation's assets to his own use, and not on the ground of any lack of power in stockholders, generally, to fix the compensation of the corporation's officers and employees. On the subject of the stockholders' power to fix such compensation, Vice Chancellor Emery said (at p. 205):

> "In the present case there are no provisions, either in the charter or by-laws, limiting the power of the board of directors or increasing the power of the stockholders in the management of the ordinary business of the company, and *the compensation which is questioned in this case was fixed directly, and in the first instance, by the stockholders, either by resolution or by-law.* Our statute (*Corporation act, Sec. 12*) provides that 'the business of every corporation shall be managed by its directors,' but it also provides (*Corporation act, Sec. 1*) that the corporation 'may make by-laws providing for the management of its property and the regulation and government of its affairs,' and (section 8) that the certificate of organization may contain provisions limiting and regulating the powers of the directors and stockholders, if they are not inconsistent with the act.
>
> *"The regulation of official duties and the salaries therefor is a proper subject of by-laws within the power of stockholders under the statute,* and although it may be doubtful whether the stockholders, *against the consent of the board of directors,* have the power under our statute to direct the employment of the agents to manage the ordinary business of the company outside of the official duties, and fix their compensation for such service, there would seem to be no question that, in the ab-

sence of statutory or charter provisions to the contrary, the stockholders, as a body, must have the general power to direct or ratify the employment of a director for that purpose and fix the compensation. Otherwise the corporation might not be able to employ any director as such agent against the objection of any stockholder.

"In reference to the power of stockholders, *the general rule is declared to be that where there is no statutory or other provision regulating the constitution and powers of the managing body, the majority of the stockholders must determine how its affairs are to be conducted, and to whom and under what restrictions the management of those affairs shall be entrusted. Lind. Comp. (5th ed.) 298.* The exercise of this right of the majority of the stockholders, either to originally direct or to affirm a contract between the company and a director or directors personally interested in the contract, is not, however, absolute and unqualified, but is subject to a necessary qualification declared in *Northwest Transportation Co.* v. *Beatty,* L. R. 12 App. 589 (Jud. Council, 1887), the leading English case, in which the general power of the stockholders was affirmed. This qualification is (*Northwest Transportation Co.* v. *Beatty,* L. R. 12 App. 593, 594) that the affirmance or adoption must not be brought about by unfair or improper means, and must not be illegal or fraudulent or oppressive towards those stockholders who oppose it. As was said in a later case, *Menier* v. *Hooper's Telegraph Works,* 9 Ch. App. 353 (1874), 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."

These opinions make clear the power of the stockholders under the Statute to adopt such

a by-law and that the adoption of such a by-law is a common practice among corporations. They also point out the reason why such by-laws are adopted by the stockholders rather than by Directors. The Directors are generally those who will be most benefitted by the bonus system. In the adoption of such by-law they would be voting extra compensation to themselves. It was to avoid just such temptations and difficulties that the appellant's self-executing and entirely reasonable plan of extra incentive was adopted; for the stockholders are simply voting with respect to their own property.

Where the arrangements to compensate have been made by the directors they have been treated as voidable and as subject to approval or ratification by the stockholders as a body. *United States Steel Corporation* v. *Hodge,* 64 N. J. Eq. 807. When, upon review, the court has found the amounts paid excessive and unratified by the stockholders or where the ratification has been brought about by the domination of those benefitted, the amounts received in excess of reasonable compensation have been ordered restored to the treasury. *Lillard* case, 70 N. J. Eq. 197.

An illustration is *Godley* v. *Crandall & Godley Co.,* 212 N. Y. 121, where the Court found (p. 127) that

> "the directors distributed the surplus earnings of the corporation among themselves and certain employee-stockholders under the guise of additional salaries, but upon the uniform basis of 9% of the common capital stock held by each and not according to the services rendered the corporation by the distributees",

on account of which the Court concluded (p. 127):

> "Plainly, such a distribution of assets was without consideration and a wrong to the cor-

> poration itself, and it is immaterial that the plaintiffs called the payments dividends and that the directors called them additional salaries."

In the instant case the Vice Chancellor said that the principals, to wit the stockholders, may not act and that their agents, to wit the Directors, are the only ones who may act; which is manifestly wrong since in the event the Directors act their action may be ratified by the stockholders or reviewed by the Court at the instance of a stockholder.

In addition, the Vice Chancellor takes the further view that the plan is so unwise and improper as that it must fall of its own weight, although it has been in force since March, 1921, without question on the part of any stockholder in any respect. It may be suggested that the stockholders were entitled to rest their judgment of its wisdom upon the very ground, among others, that all discretion is taken from the directors and principal officers of the company by the self-executing features of the plan and that the owners of the corporation are the ones best qualified to determine whether its interests will be served by such a self-executing plan and, if so, how it should be made self-executing.

We have seen that the stockholders may make, alter and repeal the by-laws.

Subdivision VI of section 1 of the Act expressly authorizes the making of by-laws "providing for the management of its property, the regulation and government of its affairs * * *". By subdivision V the "corporation" is empowered "to appoint such officers and agents as the business of the corporation shall require, and to allow them suitable com-

pensation." The term "corporation" cannot be intended to have excluded the stockholders comprising the body corporate, in favor of the directors, who are mere agents appointed for their convenience. Section 12 is not to be deemed as depriving the majority in interest of the corporate body of their inherent right of control, and certainly not with respect to the power to make, alter and amend by-laws, which is expressly reserved to the stockholders by Section 11.

POINT II.

The Court below erred in restraining the stockholders from voting upon a revision of their resolutions authorizing stock to be sold to employees.

These two resolutions and the proposed revision thereof are printed in full in the Appendix hereto (pp. x and xi).

The Vice Chancellor did not suggest that this proposed revision is *ultra vires* or in any way illegal. Indeed, in his opinion he expressly stated that stock ownership by employees is "a most desirable end".

In *Harker* v. *Ralston Purina Co.*, 45 Fed. (2d) 929, the Circuit Court of Appeals for the seventh circuit said:

> "Every corporation has the right incidental to its expressed powers and purposes to exercise such incidental power as is necessarily implied in the legitimate achievement of its expressed powers. Among such is the employement of efficient employees. At the time appellee made the contract before us, it contracted for appellant's services for five years,

> and obligated itself, in consideration therefor, to sell to him some of its capital stock at a price less than its market value. By selling the stock to the employee, appellee made sure that the employee would have a personal interest in the welfare of the corporation. The natural tendency of such interest was to increase the zeal of the employee and thus to forward the chances of success in the corporation's legitimate operations. Furthermore, it enabled the faithful employee, if he continued his employment to the maturity of his contract, to partake of the profits of the corporation. In a word, the contract contemplated the insurance of faithful efficient service to the corporation and a corresponding reward to the employee. Such a contract was clearly praiseworthy in its motives from the viewpoint of both parties, and the option to repurchase was clearly included to encourage the stay of the employee to the end of the period of his employment."

Vice Chancellor Bigelow enjoined all vote upon the revision solely because, as he expressed it:

> "A stockholder who has given his proxy in order that his vote may be cast in favor of the resolution or who attends the stockholders' meeting in person and votes for it, would not dream that he was yielding up a valuable right which his fellow-stockholders voting 'No' would retain".

The gist of that reasoning is that the stockholders will be presumed to be ignorant of the law and of their rights thereunder; and the presumption of ignorance is applied to what is now a statutory right and a part of the stockholders' charter contract.

We refer to § 124 of the General Corporation Act added as a supplement to the Revision of 1896 by P. L. 1926, p. 544.

There is no principle of corporate law more widely held or better known than that of the pre-emptive right of stockholders. A leading case is *Gray* v. *Portland Bank,* 3 Mass. 364, decided in 1807.

The doctrine of pre-emptive rights is thoroughly recognized by and set forth in the decisions of the New Jersey Courts. See: *Meredith* v. *Zinc & Iron Co.,* (1897) 55 N. J. Eq. 211; *Way* v. *American Grease Co.,* (1900) 60 N. J. Eq. 263; *Berger* v. *U. S. Steel Corp.,* (1902) 63 N. J. Eq. 809; *Wall* v. *Utah Copper Co.,* (1905) 70 N. J. Eq. 17; *Morgenstern* v. *American Malting Co.,* (1917) 87 N. J. Eq. 358; *Bingham* v. *Savings Investment & Trust Co.,* 102 N. J. Eq. 302; and *Grausman* v. *Porto Rican-American Tobacco Co.,* (1923) 95 N. J. Eq. 155.

That such right may be waived not only affirmatively, but by a mere laches or acquiescence, is equally well established and known. It is a mere incident of stock ownership, of which the stockholder may or may not avail himself, at his option. See: *Genl. Investment Co.* v. *Bethlehem Steel Corp.,* (1917) 88 N. J. Eq. 237; *Stokes* v. *Continental Trust Co.,* 186 N. Y. 285, 298-301; *Noble* v. *Great American Ins. Co.,* 200 N. Y. App. Div. 773, 779, affirmed 235 N. Y. 589; *Terry* v. *Eagle Lock Co.,* (1879) 47 Conn. 141; *Hart* v. *St. Charles Co.,* (1878) 30 La. Ann. 758; *Jones* v. *Concord etc. R. Co.,* 67 N. H. 234, 30 A. 614; *Hoyt* v. *Shenango Valley Steel Co.,* 207 Pa. 208, 56 A. 422.

Sec. 124 of the Statute provides that

> "Upon the issue of capital stock for cash, unless otherwise expressly provided in the certificate of incorporation, or in by-laws adopted by two-thirds in interest of each class of stockholders, every stockholder shall have a right (*unless waived by him*) according to the number of shares held by him to purchase his pro rata proportion of the stock to be issued, at such price (which may be in excess of the par value), within such time and on such terms as shall be fixed and determined by the Board of Directors; * * *"

It will thus be seen that the Statute Law of New Jersey expressly defines the pre-emptive right and recognizes the right of each stockholder *individually and independently* to waive the same. For there can be no doubt that the meaning of this Statute is that each stockholder may waive or not waive at his pleasure, and that the pre-emptive rights are preserved of those who do not waive.

The question raised by the Vice Chancellor's decision, therefore, is whether or not there existed the duty to tell the stockholders, in the notice of the annual meeting, what they were presumed to know from this plain language of the Statute.

Suppose a letter had been written to each stockholder of the Corporation, requesting such stockholder to consent to reduce the minimum price in the two resolutions to not less than $10, from $30 in the first resolution and $20 in the second resolution, stating in this respect just the information contained in the proposed revision and explanatory letter of the President sent with the notice of the Annual Meeting. Would the consent given by any stockholder in response to this letter be vitiated by the fact that he was not told that those not as-

senting would preserve their pre-emptive rights? As well might it be required that upon an offer of stock pro rata to stockholders a stockholder should be told that his failure to subscribe would waive his right of subscription but not that of his fellow-stockholders (see *Hoyt* v. *Great American Ins. Co.,* 201 N. Y. App. Div. 352, 194 N. Y. S. 449, and *Schramme* v. *Cowin,* 205 N. Y. App. Div. 20, 199 N. Y. S. 98).

To embark on such a program of information to stockholders as this decision would require will make prohibitive the proper holding of any stockholders' meeting. It goes beyond telling the stockholders the facts which it is rightly presumed that they may not know. It requires telling the stockholders their legal rights under the laws of the state of incorporation, which they must be presumed to know because as such stockholders they contract with reference to those laws and are bound by them. *Windhurst* v. *Central Leather Co.,* 105 N. J. Eq. 621, affirmed 107 N. J. Eq. 528. In the instant case it is a requirement that the terms of Section 124 be told to the stockholders and practically a legal opinion be given them as respects their rights thereunder.

A stockholder is presumed to know the provisions of his corporate charter and of the statute under which his corporation is organized. *Crandall* v. *Lincoln,* 52 Conn. 73, 100; 14 C. J. Title "Corporations", p. 845; *Canton Masonic Mutual Benefit Society* v. *Rockhold,* 26 Ill. App. 141, affirmed 129 Ill. 440, 21 N. E. 794; *Kansas Wheat Growers' Assn.* v. *Rowan,* 125 Kansas 710, 266 Pac. 101. It is even said that a stranger in dealing with a corporation is bound to take notice

of the limits of its powers as imposed by its charter or governing statute. *Salt Lake City* v. *Hollister,* 118 U. S. 256; *Bailey* v. *Citizens Gas Light Co.,* 27 N. J. Eq. 196; *Martyne* v. *American Fire Ins. Co.,* 216 N. Y. 183, 110 N. E. 502.

In *Crandall* v. *Lincoln, supra,* the Court said:

> "Every stockholder is presumed to know the provisions of the charter, the statute laws of the state, and the general principles of law governing corporations. The charter is the contract of membership."

The draft of the proposed revision as sent to the stockholders (and printed in the Appendix, p. xi) contemplated a change of the existing contracts so that the whole 250,000 shares might be sold at not less than $10 a share. Now that no change in the existing contracts is to be made, the draft will be reworded to eliminate such change and confine the revision to the unsold portion of these 250,000 shares.

The draft mailed to the stockholders was simply an amendment in one particular of two resolutions theretofore passed on this subject by the stockholders without any such mention of pre-emptive rights. It was thought that in this revision it would be proper to follow the precedents thus set by the stockholders. Of course, however, there is no objection whatever to embodying in the proposed revision such language as will, in terms, preserve the pre-emptive rights of non-assenting stockholders. This would be simply stating in the revision the undoubted law with respect to the revision as now drafted.

POINT III.

The bill of complaint should have been dismissed because of the provisions of appellant's by-laws, in conformity with the statute, that any business may be transacted at an annual meeting without notice of the objects thereof.

We have already shown that the amendment of the bonus by-law is within the power of the stockholders, the Vice Chancellor having erred in his opinion to the contrary. There is no suggestion that the revision of the resolutions is not within their power. This leaves as the only remaining question in the case whether or not sufficient notice was given to allow the stockholders at their annual meeting to vote upon the proposed amendment of the bonus by-law and upon the proposed revision of the resolutions of the stockholders authorizing the sale of common stock to employees.

There is a wide distinction under the by-laws and the statute between the notice necessary for an *annual* meeting and that necessary for a *special* meeting, and the distinction has a controlling bearing on the issues raised. The case of *General Investment Co.* v. *American Hide & Leather Co.*, 97 N. J. Eq. 214; 98 N. J. Eq. 326, related wholly to a *special* meeting.

The By-laws of the appellant have always provided that:

> "The annual meeting of the Stockholders of the Corporation for the election of Directors, and such other business as may properly come before the meeting, shall be held at the principal office of the Company in New Jersey, on

> the second Tuesday of March, at eleven o'clock in the forenoon, or at any other hour as the Directors shall appoint before notice of the meeting is given";

that notice of both an annual and special meeting shall be mailed and published as specifically stated; and that:

> "The notice shall state the object of the special meeting, and no other business shall be transacted at such meeting; *but this provision shall not apply to annual meetings, at which any business may be transacted without notice of the object of such annual meeting.*" (P. 27, l. 38.)

This by-law constitutes a part of the contract between the stockholders *inter sese* and of the stockholders with the Company. The stockholders are bound by it and are conclusively presumed to know of it. *United States Steel Corporation* v. *Hodge,* 64 N. J. Eq. 807, 811, 816; *Grupe* v. *Rudisill,* 101 N. J. Eq. 145, 146; *Baumohl* v. *Goldstein,* 95 N. J. Eq. 597; *Loewenthal* v. *Rubber Reclaiming Co.,* 52 N. J. Eq. 440, 441; *Miller* v. *Hillsborough Mutual Fire Assurance Association,* 42 N. J. Eq. 459 (reversed upon other grounds 44 N. J. Eq. 224, 226); *Kent* v. *Quicksilver Mining Co.,* 78 N. Y. 159; *State Ex rel Schwab* v. *Price,* 121 Oh. St. 114, 167 N. E. 366; 14 *Corpus Juris,* Corps. p. 346 *et seq.*

The by-law in question is authorized by Section 17 of the General Corporation Act which provides that "every corporation may determine by its certificate of incorporation or by-laws the manner of calling or conducting all meetings" of stockholders, even to "what number of shares shall entitle the stockholders to one or more votes, what number of

stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting in order to constitute a quorum."

Section 17 goes further and not only contemplates just what the by-law here does, but in and of itself constitutes notice to stockholders of what may be done at an annual meeting. It says:

> "At any *annual meeting* for the election of directors *any* business may be considered and transacted which may properly be brought before a *general* meeting of the stockholders,
>
> "and, *if due notice be given,* any business may be considered and transacted which under any of the provisions of this act may be considered and transacted at a *special meeting* of stockholders."

The statute makes the same clear distinction as the by-law between annual and special meetings, with said "due notice" as a prerequisite only for the latter. The kinds of business to which this prerequisite applies are "those which *under any of the provisions of this act* may be considered and transacted at a special meeting", such as amendment under Section 27, dissolution under Section 31 or merger under Section 105. The legislature's purpose in enacting the second of the clauses above quoted from Section 17 of the statute was to make it plain that, while these other sections, in terms, contemplate the holding of special meetings of stockholders, any one of the special matters of business authorized by those sections may with equal force be transacted at an annual meeting, if the same notice specified in those sections be given thereof.

"At any annual meeting", however, *"any" other business* may be transacted without such require-

ment. And this other includes all the business which would have come before the annual meeting here. Amending the bonus by-law and revising the earlier resolutions of stockholders are only such items of business as might "properly be brought before a general" as distinguished from a special meeting.

The reason for the distinction made in the by-law and statute is plain. The time and place of annual meetings are fixed and stated in the by-laws. Thereby ample notice is given to the stockholders. All of the members of a corporate body on this account are presumed to have notice of the time and place of holding its stated meetings, and are bound by the proceedings at such meetings. See 14 C. J. p. 889; Angell & Ames Private Corporations (Lathrop) Sec. 488.

Such by-laws have been uniformly held valid and sufficient.

In *Rex* v. *Hill,* (1825) 4 B. & C. 426, 6 D. & R. 593, 10 E. C. L. 644, Littledale, J., said at p. 444:

> "Where a meeting is holden on a charter day it is not necessary to give notice of it, but at any other time notice of a meeting and of the purposes for which it is holden must be given."

In *Warner* v. *Mower,* (1839) 11 Vt. 385, 391, 392, the Court held valid the authorization of a deed of assignment at an annual meeting, although the notice simply stated that the annual meeting would be held on Wednesday, April 5th, next, at 10 o'clock A. M. The Court said:

> "Those by-laws provide for an annual meeting of the corporation to be holden at their counting room on the first Wednesday of April of each year. Thus far the time and place of the meeting is fixed, and there being no restric-

> tion in regard to business, any and all business pertaining to the interests and powers of the corporation, may be transacted. *The annual meeting, of all others, is the one when, not only usually, but always, all business is expected to be transacted.*"

In *Sampson* v. *Bowdoinham Steam Mill Corp.*, (1853) 36 Me. 78, the Court held similarly, saying:

> "The 1st Article of the By-Laws had prescribed the business to be transacted once a year, at an annual meeting, to be the choice of officers. That business would be presented at each annual meeting by the by-laws presumed to be known to each member of the corporation. It could not be considered as business transacted without notice. In no instance does there appear to have been a statement in the notice for calling a meeting, that it was called for the choice of officers. Yet the Clerk, Treasurer and Directors chosen, have been constantly recognized in the records and in meetings legally called for the transaction of other business, as officers of the corporation."

So in *State* v. *Bonnell,* (1878) 35 Ohio St. 10, it was said at p. 15:

> "Where the meeting is stated and general, notice of the time and place of holding it, or of the business to be transacted, is, in the absence of provision or regulation to the contrary, in no case required."

And in *Morrill* v. *Little Falls Mfg. Co.,* (1893) 53 Minn. 371, 55 N. W. 547, 21 L. R. A. 174, the Court said at p. 177:

> "As to the first point, all that is necessary to say is that the by-laws fixed the time and place of holding the meeting, and neither the charter nor the by-laws required any notice to

> be given. Under such circumstances, the rule is that the by-laws themselves are sufficient to all the stockholders, and no further notice is necessary. 1 Morowitz, Priv. Corps. Sec. 479."

As a matter of fact, as will appear at other points in this brief, *even were the meeting* in question *a special meeting* of stockholders, sufficient notice was given to entitle the stockholders to vote at it on the proposed amendment of the bonus by-law and the proposed revision of the resolutions. Certainly the notice given more than satisfied every requirement under the terms of the by-law and the statute as respects *annual* meetings.

Regarding Chapter 175, Laws of 1920.

At the argument below the only reason advanced against the foregoing logic was that the existing bonus by-law and the existing resolutions of stockholders authorizing sale of stock to employees were, or should have been, adopted under Section 158 of the General Corporation Act (Chapter 175, Laws of 1920, p. 354).

Section 4 of the act of 1920, however, expressly provides:

> "The privileges and powers conferred by this act shall be deemed to be in addition to and independent of any and all powers and authority conferred by any other law or laws, *and not in restriction or limitation of any of the powers now permitted to corporations of this state.*"

The Legislature thus took pains to provide that the maxim *expressio unius est exclusio alterius* should *not* be applicable.

Under the act of 1920 a means is furnished of adopting a stock purchase plan for employees which will cut off the pre-emptive rights of non-assenting stockholders. The record shows that neither the resolution of March 10, 1925, nor that of Septem- 7, 1929, was formulated or intended to come under the statute. The Board of Directors had not taken any of the action required of it to that end. (See supplemental affidavit of H. Laurence Brooke, the Secretary, pp. 189-191.) There was no occasion in 1925 or in 1929 to resort to the provisions of the 1920 act because there was no intent to deprive any dissenting stockholder of his pre-emptive right. Nor does the proposed revision of the resolutions contemplate any change in that regard. The power to issue the no par common shares at not less than $10 per share (or at any other price they might fix) is already vested in the Board of Directors by Section 121 of the Corporation Act as availed of by the certificate of incorporation of the defendant Company, authorizing the Board to issue the no par common stock "from time to time for such consideration and upon such terms and conditions as from time to time may be fixed by the Board of Directors", (p. 114). Hence, the suggested issue of shares at not less than $10 per share is not only *intra vires* the appellant Company, but *intra vires* its Board of Directors by virtue of the power expressly conferred upon the Board by the certificate of incorporation as respects stock without par value. Section 158 does not pretend to prescribe the *only* way in which *willing* stockholders may waive their pre-emptive rights. It is intended to provide a way of cutting off the pre-emptive rights of *unwilling* stockholders, under certain conditions. Section 124 of the General Corporation Act

expressly recognizes that the waiver of pre-emptive right may be by some, less than all, of the stockholders.

The Vice Chancellor did not take the point that it was necessary for the appellant to comply with the statute of 1920. He ruled that the existing by-law is illegal upon its face, which had not been raised or discussed, and that the stockholders should not be allowed to vote upon an amendment for that reason. As to the resolutions, he ruled that the notice did not sufficiently inform the stockholders of their pre-emptive rights or the effect thereon of the votes for and against the proposed revision of such resolutions. We have answered those arguments, respectively, in the first two points of this brief.

The Court of Chancery will not review the election of Directors of the Appellant Company as prayed in the Addition by Way of Supplement to the Bill of Complaint.

In a supplement to their bill (p. 250) the complainants asked the Court of Chancery to review and declare void the appellant's election of directors held on March 10, 1931, at the stockholders' regular annual meeting. Vice Chancellor Bigelow took the view at the oral argument that jurisdiction to that end is vested exclusively in the Supreme Court. In that respect he was clearly correct. *Owen* v. *Whitaker,* 20 N. J. Eq. 122, 124; *Goldstein* v. *Ewing,* 62 N. J. Eq. 69, 72; *Barna* v. *Kirczow,* 71 N. J. Eq. 196; *Attorney General* v. *American Tobacco Co.,* 55 N. J. Eq. 352, 372.

Hence, the complainants cannot hold their bill by aid of the supplement, which, on the contrary, should have been dismissed by the Court below regardless of its action touching the original bill.

POINT IV.

None of the grounds asserted in the bill of complaint sustain the preliminary injunction.

The grounds set forth in the bill of complaint and urged by counsel below, none of which were accepted by the Vice Chancellor, are as follows:

(1) That the stockholders were not sufficiently informed by the notice of the annual meeting to vote intelligently upon the proposed amendment of their existing bonus by-law;*

(2) That the stockholders were not sufficiently informed by the notice of the annual meeting to vote intelligently upon the proposed revision of their earlier resolutions authorizing the sale of stock to employees;*

(3) That the proxies signed by the stockholders should not be voted because they ran to Benjamin L. Belt, who is the President, William R. Perkins, who is the counsel, and H. Laurence Brooke, who is the Secretary of the Company;

(4) That the shares of stock registered in the name of H. Laurence Brooke, agent, should not be voted.

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*We have seen that no notice whatever of either of these objects was required because the meeting was an annual meeting.

Taking up these four points in the order above stated:

(1) *As to amendment of the bonus by-law:* We have already shown at page 14 of this brief that the proposed changes are both few and simple. A complete printed copy of the by-law as it would read when amended was enclosed with the notice of the meeting and was accompanied by the President's letter explaining the important changes to be made, which letter offered to send a copy of the existing bonus by-law for comparison to any requesting stockholder. The President's letter and the proposed amendment, as well as the existing by-law, are printed in the appendix hereto (pp. xii, vi and iii).

The by-law and the proposed amendment thereof show on their face that every officer or employee of the Company is entitled to participate and therefore the directors were entitled to participate under it since the President by the statute is required to be a director and the by-laws of the appellant have always required that the President and the five Vice-Presidents be directors. These by-laws are binding upon the stockholders, who are conclusively presumed to know their contents. As a matter of fact, the stockholders have invariably, since the organization of the Company in 1911, elected as their directors only those who are officers or employees of the Company, giving their time exclusively to its affairs.

In the nature of things no forecast can be given of the amount of the bonus in the coming years, nor who will participate in it. That depends on what the earnings will be and who will be employed and in what positions and how many common shares

each employee will own. No bonus was distributed for the years 1930, 1929, 1928 and 1927; and for the year 1926 the total bonus distributed was $21,978.15, (p. 86).

(2) *As to revision of the resolutions:* The resolution adopted by the stockholders on March 10, 1925, authorized the Directors to sell not in excess of 100,000 shares of the Common Stock, at not less than $30 per share, to such employees of the appellant, at such time or times, on such term or terms, in such manner or manners and in such amount or amounts as might be determined by the Board of Directors from time to time. The resolution adopted by the stockholders on September 7, 1929 was exactly similar in its terms, except that it authorized the Directors to sell not exceeding an additional 150,000 shares of the Common Stock at not less than $20 per share. (Both of these resolutions are printed in the Appendix, pp. x and xi.)

As appears from the proposed revision, a printed copy of which was sent to the stockholders with the notice of the Annual Meeting and which is set forth at p. xi of the Appendix hereto, only a single change in the aforesaid resolutions was proposed, viz., a reduction of the minimum price from the $30 and $20 fixed by such resolutions, respectively, to $10 per share. It was not proposed to authorize the Directors to issue any additional shares or otherwise change their discretion with respect to the sale of the shares.

The bill of complaint infers that the stockholders were not informed that Directors might participate in sales made under the proposed revision. The notice of the Annual Meeting and the papers which

accompanied it, and the well-known policy of the Company respecting the selection of its Directors, as above stated, made it perfectly plain to the stockholders that the Directors could participate under the proposed revision of the resolutions. The revision would expressly authorize the shares to be sold to "officers and employees of the Company." This would include all the Directors because the stockholders from the organization of the Company in 1911 have elected as Directors only those who were officers and employees of the Company, giving their time exclusively to its affairs. It would authorize a sale to the President and the Vice-Presidents. The Statute (Sec. 13) requires the President to be a Director. The By-laws have always required the President and the five Vice-Presidents to be Directors.

It appears upon the face of the complainants' own papers in this cause that they were fully informed of the fact that Directors have been among the officers and employees who have purchased stock under the resolution of March 10, 1925 and will likewise be entitled to purchase stock under the proposed revision of both resolutions. Specifically, we may quote from Exhibit A annexed to the reply affidavit of the complainant, Buford Scott (being Mr. Fred Scott's letter to Mr. Belt, the President, dated March 24, 1931), as follows (p. 231):

> "* * * in view of the fact that all of the directors are officers and employees and would be beneficiaries of any stock or bonus plan if adopted, we feel * * *."

And again (p. 232):

> "In view of the fact that all of the members of the Board are either officers or employees of the Company * * *."

But we particularly direct the Court's attention to the following quotation from the circular letter sent by the complainants to all stockholders (Exhibit B annexed to the affidavit of said Buford Scott, p. 239):

> "This is especially true where all of the directors are officers and employees who would benefit by the proposed plan * * *."

The Court will not assume that the other stockholders of the defendant Company are endowed with less information than the complainants. Indeed, the last quotation expressly gave the stockholders any such information they may have theretofore lacked. And in the circular letter on behalf of the appellant, in reply to the letter to the stockholders from which the last quotation was taken, it was expressly stated to each of the stockholders that Directors had been eligible to participate under the existing By-law and the existing resolutions authorizing sale of shares to employees and would be eligible to participate under the proposed amendment and revision thereof, respectively, (pp. 202-3).

In the nature of things no forecast can be given as to who will be the purchaser of shares and in what amount and at what price either in case the proposed revision is adopted or the resolutions of March 10, 1925 and September 7, 1929 remain as they are. This is a matter which the resolutions as well as the proposed revision leaves in the discretion of the Board of Directors in all respects and depends on what the future may disclose as to the business of the Company and those employed by it.

Full information has been given as to the terms of the outstanding contracts for selling shares un-

der these resolutions and the total number of shares embraced in them (pp. 86-95, 202-4), except the separate individual names and amounts, with the balances due, if any, which make up the aggregate of 53,938 shares now embraced in them. This information has been withheld for organization reasons, just as in the case of salaries. It cannot possibly be material, now that alteration or cancellation of these contracts has been definitely withdrawn and the only question to be decided is the single one of a reduction in the minimum price at which future sales of the unsold portion of the 250,000 shares may be made.

(3) *As to the contention that Messrs. Belt, Perkins and Brooke are ineligible as proxies:* It has been the custom of the company from its organization in November, 1911, to send out proxies in which the stockholders executing same named such officers and employees as their agents, (p. 77). We believe this to be a universal custom with all corporations, (p. 78). Such proxies were held to be valid in *Bache* v. *Central Leather Co.,* 78 N. J. Eq. 484; *State* v. *Meredith,* 183 Iowa 783, 788; 167 N. W. 626.

The stockholders were not misled. They knew they were appointing officers and employees as their agents. The proxies, which ran in the alternative, appointed Benjamin L. Belt, who is the President of the Company, William R. Perkins, who is the Counsel of the Company, or H. Laurence Brooke, who is the Secretary of the Company. Each was attached to a notice of the Annual Meeting signed "H. Laurence Brooke, Secretary" and accompanied by a letter to the stockholders on the "Office of the President" stationery of the Company signed "B. L. Belt, President". Mr. Belt had

been a Director of the Company since its organization. From its organization he was a Vice-President until March, 1924, when he became, since has been and now is, its President.

Proxies are the mere temporary agents of the stockholders. (See *Bache* v. *Central Leather Co.*, 78 N. J. Eq. 484, 486, 487, and *Warren* v. *Pim*, 66 N. J. Eq. 353, 383). The Statute (Sec. 17) places no limitation on whom they may select for this purpose. It simply says "stockholders may vote at all meetings by proxy in writing". The Court, therefore, may not exclude under such a statute officers and employees of the Company if the stockholders wish to select them. *Re Lighthall Co.*, 47 Hun (N. Y.) 258; *State* v. *Meredith*, 183 Iowa 783; 167 N. W. 626.

(4) *As to the shares registered in the name of H. Laurence Brooke, as Agent:* On March 10, 1925, the stockholders passed a resolution authorizing the Board of Directors to sell not exceeding 100,000 shares of Common Stock at not less than $30 per share to such employees of the Company, in such amounts, at such times and on such terms as the Board of Directors might from time to time adopt for that purpose. This is one of the resolutions of which revision is sought.

Acting under this resolution the Board of Directors sold shares at $30 a share, using for that purpose a form of contract which appears at page 124 of the record, (pp. 88, 91). By this contract the purchaser was to pay the purchase price in installments of $1 per share per quarter, with interest thereon at 5% per annum, which would make the period of payment seven and one-half years. Pending payment the shares were to stand in the name of an agent who could vote the same, could pledge

the same in order to finance the purchase and should collect and apply all distributions on the same to the payment of the purchase price.

The contract appointed Mr. G. T. Minnegerode as such agent, and provided that in case he ceased to be such agent his successor should be the person selected by the Board of Directors for that purpose. Mr. Minnegerode was then the Secretary of the Company. Subsequently he resigned as Secretary of the Company and as such Agent; and thereupon Mr. H. Laurence Brooke was chosen Secretary of the Company and designated by the Board under the terms of the contract as such Agent instead of Mr. Minnegerode, (pp. 94-95).

At the record date for the Annual Meeting, namely, 3 P. M. on February 9, 1931, such contracts then outstanding embraced 53,938 shares. Mr. Minnegerode had voted the shares embraced in outstanding contracts at all meetings of stockholders while he was such Agent. Mr. Brooke has voted such shares at all meetings of stockholders while he has been such Agent, (pp. 94-95 and 162-163).

Section 37 of the Statute provides that every person holding stock in a representative or fiduciary capacity "may represent the same at all meetings of the corporation and may vote thereon as a stockholder". Such right is absolute. *Re St. Lawrence Steamboat Co.*, 44 N. J. L. 529, 540; and *Re Cape May etc. Co.*, 51 N. J. L. 78.

There was no separation of the voting power from the stock ownership. Such agent is the trustee of an active trust; he holds them for a definite purpose; he may pledge them to finance the purchase price; he may collect and apply to the purchase price the distributions on such shares. The arrangement is a part of a purchase agreement

made for the protection of the Company in the sale of its shares to its employees. Had these shares been issued to the employees, the employees could vote with respect to the same although they had not paid the subscription price therefor in full. *Downing* v. *Potts,* 23 N. J. L. 66; *Savage* v. *Ball,* 17 N. J. Eq. 142; *American etc. Co.* v. *State Board,* 56 N. J. L. 389. No reason is seen why in lieu of issuing these certificates for these shares to the purchasers, they could not be put into the hands of a trustee to hold until payment in full with power in the meantime such as the Agent is given by the contract. See *Clowes* v. *Miller,* 60 N. J. Eq. 179, which clearly holds that such practice is proper.

POINT V.

The Court of Chancery should at the least have permitted the stockholders to cast their votes subject to the future order of the court.

It is settled that the Court of Chancery should not have enjoined the stockholders from *voting* upon the proposed amendment of their by-law and the proposed revision of their resolutions. We did not contend, as stated in the opinion of the Vice Chancellor, that the bill of complaint had been prematurely filed. We contended, and now repeat, that the Court should not have granted a preliminary injunction prohibiting the stockholders' vote from being taken. See *Grausman* v. *Porto Rican-American Tobacco Co.,* 95 N. J. Eq. 223.

Such has been the practice even where the Court of Chancery has felt a serious doubt as to whether

it would allow the result of the vote to take effect.

In Vice Chancellor Backes' recent decision in *Berendt* v. *Bethlehem Steel Corporation,* 108 N. J. Eq. 148, he had a very serious doubt as to "what the defendants expect to gain by the resolution", (ratifying the administration of the company's bonus system during years past), even if adopted by the stockholders; nevertheless he allowed the stockholders to cast their vote upon it, saying: "Whether the defendants will eventually be entitled to the benefit of the resolution and the advantages that may flow from it will be reserved until the case is unfolded at the final hearing * * *."

In *Lonsdale* v. *International Mercantile Marine Co.,* 101 N. J. Eq. 554, in which Vice Chancellor Bentley found that a violation of the complainants' vested rights was involved, "the Company was permitted to hold its meeting and vote on the proposed plan." And the vote was also taken in *Outwater* v. *Public Service Corporation,* 103 N. J. Eq. 461, which involved a merger plan found by Vice Chancellor Backes to be an "unwarranted and oppressive" means of casting minority stockholders "into the discard."

And in *Bingham* v. *Savings Investment & Trust Co.,* 102 N. J. Eq. 302, affirming 101 N. J. Eq. 413, it appears from the opinion of the Chief Justice that the original restraint had been modified by Vice Chancellor Backes to permit a vote of stockholders. In *Bernstein* v. *New Jersey Bankers Securities Co.,* 146 Atl. 60, 7 M. 479, Vice Chancellor Backes lifted the embargo on the meeting called to ratify a contract for the exchange of all the tangible assets of the defendant company for the shares of another company, notwithstanding that the bill of complaint charged that the plan was

ultra vires, unfair and inequitable; and notwithstanding that the Vice Chancellor scented fraud on the part of Mr. Weinberger. See also *Windhurst* v. *Central Leather Co.,* 101 N. J. Eq. 543; *Snider* v. *Freehold Theatre Co.* (E. & A.), 150 Atl. 415 (not yet officially reported).

In *Elevator Supplies Co.* v. *Wylde,* 106 N. J. Eq. 163, Vice Chancellor Fallon lifted the embargo against the stockholders' vote, upon the return of the order to show cause, and denied the application for a preliminary injunction, saying:

> "In denying the preliminary injunction, and the appointment of a trustee to displace the board of directors of the corporation, as sought in the matter *sub judice,* I have in mind the cautionary words of Judge Baldwin referred to in *Citizens Coach Co.* v. *Camden Horse Railroad Co.,* 29 N. J. Eq. 229 (at p. 303), 'there is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, and which is more dangerous in a doubtful case, than the issuing of an injunction.' "

Vice Chancellor Bigelow undertook to distinguish the instant case from the *Grausman* case as respects the proposed amendment of the bonus by-law, thinking the latter did not apply because the bonus by-law has a basis which he thought makes it improper and illegal. He did not undertake to distinguish the *Grausman* case in enjoining a vote upon the proposed revision of the stockholders' resolutions. Even had the Vice Chancellor been right in treating the by-law illegal on its face, he would still be without justification for preliminarily enjoining the stockholders from voting upon the proposed revision of their resolutions touching sale of stock to employees. Now that we have

shown that the Vice Chancellor was in error in holding the basis of the bonus by-law to be improper, there is no reason whatever for distinguishing this case, in either of its aspects, from the *Grausman* case and the other cases cited under this point.

CONCLUSION.

The order under appeal should be reversed, so as to permit the stockholders to register their vote with respect to their internal affairs at their adjourned annual meeting; and, further, with directions to the Court of Chancery to dismiss the bill of complaint.

Respectfully submitted,

May Term, 1931.

PITNEY, HARDIN & SKINNER,
Solicitors for the defendant-appellant, P. Lorillard Company.

MERRITT LANE,
SHELTON PITNEY,
MAHLON PITNEY,
Of Counsel.

APPENDIX.

Notice of Meeting and Form of Proxy.

P. LORILLARD COMPANY

JERSEY CITY, N. J.

February 14, 1931.

To the Stockholders of

P. LORILLARD COMPANY:

Notice is hereby given that the Annual Meeting of the Stockholders of P. Lorillard Company, a New Jersey Corporation, will be held at the principal office of the Company, Room 803, 15 Exchange Place, Jersey City, N. J., on March 10, 1931, at 11:00 o'clock in the forenoon, for the election of Directors; for the amendment of the existing Bonus By-Law of the Company, draft of which proposed amendment is enclosed; for the revision of Resolutions heretofore adopted by the Stockholders providing for the sale of Common Stock of the Company to its employes, draft of which proposed revision is enclosed and for the transaction of such other business as may properly come before the meeting.

H. LAURENCE BROOKE,
Secretary.

If unable to be present in person, do not fail to sign and return the annexed proxy, as soon as possible, so that the meeting may be properly held.

KINDLY DETACH HERE AND RETURN

- - - - - - - -

PROXY

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, hereby constitutes, appoints and di-

rects Benjamin L. Belt, William R. Perkins, and H. Laurence Brooke, or any of them, in the name, place and stead of the undersigned, to attend as the attorneys and agents of and for the undersigned at a meeting of the Stockholders of P. Lorillard Company, a New Jersey Corporation, to be held on the 10th day of March, 1931, at 11:00 o'clock in the forenoon, at the office of the Company, Room 803, 15 Exchange Place, Jersey City, N. J., as well as at any and all adjournment or adjournments of such meeting, and to vote as the proxy of the undersigned thereat upon and with respect to the election of Directors, the amendment of the existing Bonus By-Law of the Company, the revision of the Resolutions heretofore adopted by the Stockholders providing for the sale of Common Stock of the Company to its employees and the transaction of such other business as may properly come before said meeting or any adjournment thereof, according to the number of votes the undersigned would be entitled to cast if then personally present, and to do all such acts and things as may be necessary or proper in order to carry out the Resolutions adopted and the actions taken by said meeting or any adjournment thereof, hereby giving to said attorneys and agents, or any of them, power to substitute another or others in their or his stead and ratifying and confirming all that the attorneys and agents of the undersigned, or any of them, or any substitute or substitutes for any of them, may do by virtue hereof. This proxy shall be deemed dated on the date set for the meeting herein mentioned, unless a different date is inserted below.

In Witness Whereof, I have hereunto set my hand and seal this....day of ....., 1931.

..... (Seal)

Appendix

PRESENT BONUS BY-LAW

ARTICLE XII OF BY-LAWS

BONUS TO OFFICERS AND EMPLOYEES.

Section 1. As soon as reasonably may be after the end of the calendar year 1921, and of each calendar year of the company's existence thereafter, and under and in accordance with all the terms of this article, the Treasurer of the Company shall ascertain the net profits of the Company for such year, and shall pay and distribute an amount of such net profits equal in the aggregate to fifteen per cent (15%) thereof to and among those officers and employees of the company who have both been in the employ and owned Common Stock of the Company for the whole of such year as an extra dividend upon and in the proportion among such officers and employees of such shares of Common Stock thus owned by them respectively.

Section 2. For the purpose of this article of the By-Laws, the net profits of the Company for any year shall consist of the income and earnings of the Company in the operation and conduct of its businesses and affairs for such year after deducting therefrom all the taxes, costs, expenses and losses, such provisions as may be determined by the Board of Directors of the Company for depreciation and outstanding trade obligations and otherwise, and an additional amount equal in the aggregate to the 7% interest on its outstanding 7% Bonds, the 5% interest on its outstanding 5% Bonds, the 5½% interest on its outstanding 5½% Bonds, the 7% dividends on its issued 7% Preferred Stock, $1.50 per share on its average issued Common Stock without nominal or par

value, and 7% on its average surplus and undivided profits for such year, to which profits shall be added or from which profits shall be deducted, as the case may be, the Company's proportion (based on its stock holdings) of the net profits or losses for such year of its subsidiary Companies.

Section 3. Wherever used in this Article the word "owned" shall mean and be satisfied only by the entire registered, legal and beneficial ownership, but the mere pledging of shares as collateral security shall not be deemed to impair such ownership if otherwise existing, and Common Stock sold by the Company to any officer or employee shall be deemed so owned by such officer or employee so long as such officer or employee continues under contract to purchase the same from the Company notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee. To constitute a basis of participation for any year, the employment by the Company must exist for the whole of such year, except that should any officer or employee fail, for any reason, to be in the service of the Company for the whole of any year, such officer or employee, or the estate thereof, as the case may be, shall nevertheless participate in such payment and distribution for such year in the proportion that the duration of the employment of such officer or employee within such year bears to the whole of such year. To constitute a basis of participation with respect to any year, shares of said Common Stock must be owned by an officer or employee for the whole duration of the employment of the officer or employee by the Company within such year, except that should an officer or employee of the Company purchase shares of said Common Stock during such year from an officer or employee of the Company or from the estate of such an officer or employee, such shares shall constitute a basis for participation by such purchaser in such payment and distri-

bution for such year in the proportion that the period during which such shares are owned by the purchaser within such years bears to the whole of such year, if, disregarding the limitation hereinafter contained as to the number of shares upon and with respect to which an officer or employee may participate, such shares might otherwise have entitled the officer or employee who, or whose estate, is selling the same to participate upon and with respect thereto in such payment and distribution for such year. The president may not participate in any such payment and distribution upon or with respect to any shares of said Common Stock in excess of 3⅓% of the average issued Common Stock of the Company for such year, no vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 2% of the average issued Common Stock of the Company for such year, no secretary, treasurer, auditor, manager, superintendent, head of a department (such as leaf, law, sales, manufacture, traffic and the like) assistant to any of the foregoing, or assistant or secretary to the president or to any vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 1% of the average issued Common Stock of the Company for such year, and no other officer or employee of the Company may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of ½ of 1% of the average issued Common Stock of the Company for such year; but the Board of Directors of the Company may at any time by resolution in writing add to said "1%" Class any officer or employee or group or class of officers or employees then in said "½ of 1%" Class. Anything in this Article to the contrary notwithstanding, any shares of said Common Stock so owned during the whole of the last six months of the calendar year 1921 shall be deemed to have been

so owned for all the purposes of this article for the whole of the calendar year 1921.

Section 4. The acts and findings of the Treasurer in ascertaining the net profits for any such year and making payment and distribution of the 15% thereof shall be binding and conclusive on all parties, and no one claiming hereunder shall have a right to question the said acts and findings or to any examination of the books, papers or accounts of the Company, or to continue with the Company or any claim against the Company or against any officer, director or employee of the Company or any right or claim whatever except as herein specifically expressed. But nothing herein contained shall be construed to preclude the Company from correcting an error or preventing or undoing a fraud.

Section 5. This Article of the By-Law may be amended or repealed only by the action of the stockholders of the Company and not by the Directors.

PROPOSED AMENDMENT OF BONUS BY-LAW

RESOLVED: That Article XII of the By-Laws entitled "Bonus to Officers and Employees" be amended so as to read as follows:

"Section 1. As soon as reasonably may be after the end of the calendar year 1931, and of each calendar year of the Company's existence thereafter, and under and in accordance with all the terms of this Article, the Treasurer of the Company shall ascertain the net profits of the Company for such year, and shall pay and distribute an amount of such net profits equal in the aggregate to five per

cent. (5%) thereof to and among those officers and employees of the Company who have both been in the employ and owned Common Stock of the Company as hereinafter stated as an extra dividend upon and in the proportion among such officers and employees of such shares of Common Stock thus owned by them respectively.

"Section 2. For the purpose of this Article of the By-Laws, the net profits of the Company for any year shall consist of the income and earnings of the Company in the operation and conduct of its businesses and affairs for such year after deducting therefrom all the taxes, costs, expenses and losses, such provisions as may be determined by the Board of Directors of the Company for depreciation and outstanding trade obligations and otherwise, and an additional amount equal in the aggregate to the 7% interest on its outstanding 7% Bonds, the 5% interest on its outstanding 5% Bonds, the 5½% interest on its outstanding 5½% Bonds and the 7% dividends on its issued 7% Preferred Stock, to which profits shall be added or from which profits shall be deducted, as the case may be, the Company's proportion (based on its stock holdings) of the net profits or losses for such year of its subsidiary Companies.

"Section 3. Wherever used in this Article the word 'owned' shall mean and be satisfied only by the entire registered, legal and beneficial ownership, but the mere pledging of shares as collateral security shall not be deemed to impair such ownership if otherwise existing, and Common Stock sold by the Company to any officer or employee shall be deemed so owned by such officer or employee so long as such officer or employee continues under contract to purchase the same from the Company notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee. To constitute a

basis of participation for any year, the employment by the Company must exist for the whole of such year, except that should any officer or employee fail, for any reason, to be in the service of the Company for the whole of any year, such officer or employee, or the estate thereof, as the case may be, shall nevertheless participate in such payment and distribution for such year in the proportion that the duration of the employment of such officer or employee within such year bears to the whole of such year. To constitute a basis of participation with respect to any year, shares of said Common Stock must be owned by an officer or employee for the whole duration of the employment of the officer or employee by the Company within such year, except that should an officer or employee of the Company purchase shares of said Common Stock during such year from an officer or employee of the Company or from the estate of such an officer or employee, such shares shall constitute a basis for participation by such purchaser in such payment and distribution for such year in the proportion that the period during which such shares are owned by the purchaser within such year bears to the whole of such year, if, disregarding the limitation hereinafter contained as to the number of shares upon and with respect to which an officer or employee may participate, such shares might otherwise have entitled the officer or employee who, or whose estate, is selling the same to participate upon and with respect thereto in such payment and distribution for such year. The president may not participate in any such payment and distribution upon or with respect to any shares of said Common Stock in excess of 7½% of the average issued Common Stock of the Company for such year, no vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 5% of the average issued Common Stock of the Company for such year, no secretary, treasurer, auditor, manager, superintendent, head of a de-

partment (such as leaf, law, sales, manufacture, traffic and the like), assistant to any of the foregoing, or assistant or secretary to the president or to any vice-president may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 2½% of the average issued Common Stock of the Company for such year, and no other officer or employee of the Company may participate in any such payment and distribution upon or with respect to shares of said Common Stock in excess of 1% of the average issued Common Stock of the Company for such year; but the Board of Directors of the Company may at any time by resolution in writing add to said '2½%' Class any officer or employee or group or class of officers or employees then in said '1%' Class. Anything in this Article to the contrary notwithstanding, any shares of said Common Stock acquired by an officer or employee from the Company at any time in 1931 shall be deemed to have been owned by such officer or employee for all the purposes of this Article for the whole of the calendar year 1931 notwithstanding such stock does not stand of record in the name of or has not been paid for by such officer or employee.

"Section 4. The acts and findings of the Treasurer in ascertaining the net profits for any such year and making payment and distribution of the 5% thereof shall be binding and conclusive on all parties, and no one claiming hereunder shall have a right to question the said acts and findings or to any examination of the books, papers or accounts of the Company, or to continue with the Company or any claim against the Company or against any officer, director or employee of the Company or any right or claim whatever except as herein specifically expressed. But nothing herein contained shall be construed to preclude the Company from correcting an error or preventing or undoing a fraud.

"Section 5. This Article of the By-Laws may be amended or repealed only by the action of the Stockholders of the Company and not by the Directors.

Appendix

ARTICLE X OF BY-LAWS.

Dividends.

Section 1. Dividends upon the seven (7) percent cumulative preferred stock of the Company, payable out of the accumulated profits of the Company in excess of such sum, if any, as shall have been reserved as a working capital, shall be declared by the Directors so as to be payable on the first business day of January, April, July and October of each year. When all accrued dividends on the preferred stock have been paid, the Directors shall, if in their judgment the surplus or net profits in excess of such sum, if any, as shall have been reserved as a working capital, and after deducting the amount of dividends accrued and accruing on the preferred stock during the current year, shall be sufficient for such purpose, have power, in their discretion, to declare a dividend or dividends on the general or common stock of the Company payable as may be directed. But no dividend shall be made payable within fifteen days of the date of its declaration.

RESOLUTION OF STOCKHOLDERS AUTHORIZING SALE OF COMMON STOCK TO EMPLOYEES

Adopted March 10, 1925.

"Resolved: That the Board of Directors of the Company be and it hereby is authorized to sell at not less than $30 per share, not exceeding 100,000 shares, of the authorized and unissued Common Stock of the Company to such employee or employees of the Company, at such time or times, on such term or terms, in such manner or manners and in such amount or amounts as may be determined by the said Board of Directors at any time or from time to time."

Appendix

RESOLUTION OF STOCKHOLDERS AUTHORIZING SALE OF COMMON STOCK TO EMPLOYEES

ADOPTED SEPTEMBER 7, 1929.

"RESOLVED: That the Board of Directors of this Corporation be and it hereby is authorized to issue and sell at not less than $20 per share not exceeding 150,000 shares of Common Stock without nominal or par value out of the increased number of such shares this day authorized by the stockholders and unissued, to such employee or employees of the Corporation at such time or times on such term or terms in such manner or manners and in such amount or amounts as may be determined by said Board of Directors at any time or from time to time."

PROPOSED REVISION OF STOCKHOLDERS' RESOLUTIONS.

RESOLVED: That the resolution passed March 10, 1925, authorizing the Board of Directors to sell to employees not exceeding 100,000 shares of Common Stock at not less than $30. per share and the resolution passed September 7, 1929, authorizing the Board of Directors to sell to employees not exceeding an additional 150,000 shares of Common Stock at not less than $20. per share, are hereby amended and consolidated so that in lieu of said resolutions the Board of Directors shall be and it is hereby authorized to issue and sell at not less than $10. per share not exceeding 250,000 shares of the Common Stock of this Company, without nominal or par value, to such officers and employees of the Company, at such times, on such terms and in such manner and amounts as may be determined by said Board at any time and from time to time.

"RESOLVED FURTHER: That any contracts now existing for the sale to employees of Common Stock under said resolution of March 10, 1925, may be by said Board cancelled or altered in conformity with the above amendment of said resolution, as said Board may determine."

New Jersey State Library

Appendix

Letter of President Accompanying Notice of Annual Meeting.

P. LORILLARD COMPANY

119 WEST FORTIETH STREET

NEW YORK

OFFICE OF THE PRESIDENT

February 14, 1931.

To the Stockholders of

P. LORILLARD COMPANY.

You will observe from the enclosed statement of the Company that its net profits for 1930 applicable to Common Stock were $2,822,831.02 equivalent to $1.47 per share on the Common Stock as compared with $545,123.86 net profits or twenty-eight cents per common share for 1929. This gratifying increase, notwithstanding the general business depression, is due in large measure to the healthy growth of OLD GOLD which has continued.

There is being mailed to you herewith a notice of the annual meeting of stockholders from which you will see that, in addition to the election of directors, there will be considered a revision of the bonus by-law and of the resolutions hereto passed authorizing the sale of Common Stock to employees.

A copy of the proposed revision of the bonus by-law accompanies the notice; and a copy of the present bonus by-law will be sent any stockholder on application so that comparison may be made if desired. The essential change consists in making the amount to be distributed 5% of the net profits applicable to dividends on the Common Stock instead of 15% of the net profits remaining after deducting 7% on the average amount represented by Common Stock and surplus. For the past sev-

eral years the terms of this by-law have precluded any bonus distribution and this has proven quite a handicap in view of the bonus being paid by other companies. In this situation a division of such profits for bonus purposes on a 5 to 95 basis between employees and common stockholders is suggested as neither unfair nor excessive.

The stockholders authorized on March 10, 1925, the sale to employees of 100,000 shares of Common Stock at not less than $30. per share and on September 7, 1929, the sale to employees of an additional 150,000 shares at not less than $20. per share. But unfortunately, though these minimum prices were less at the time than market value, conditions so changed that none of the 150,000 has been sold and, while contracts for the sale of some of the 100,000 shares were made, these contracts are proving burdensome instead of beneficial as they necessarily prevent a disposition by the purchaser for a period of years in order to retain the interest of the purchaser through stock ownership. What is now suggested is the revision (see copy enclosed) of these authorizations, and the contracts made under them, to a price more consonant with market conditions, say not less than $10. per share. Such action is recommended as in keeping with what other companies are doing and necessary to give proper effect to the desire of the stockholders, already expressed, to interest employees in the Company through stock ownership.

Since the annual meeting will be important it is hoped that a full expression may be obtained from the stockholders. For this reason, if you cannot be present in person, please do not fail to execute and return the proxy which accompanies the notice, using the stamped addressed envelope enclosed for that purpose.

Respectfully,

B. L. BELT,
President.

