

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant in Error,

Vs.

LINWOOD HAINES,
Plaintiff in Error.

Sur Indictment.

For Obtaining
Money Under False
Pretences.

On Appeal.

Notice of Appeal.

To Charles F. Sexton,
Prosecutor of the Pleas of Monmouth County.
Attorney of Defendant in Error.

Take notice that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1. Because the learned Court refused to admit Plaintiff in error to introduce legal evidence in his behalf.

2. Because the learned Court permitted the defendant in error to introduce illegal evidence in its behalf.

3. Because the learned Court refused to dismiss the indictment at the close of the case of the State's as requested by the counsel for the plaintiff in error on the following grounds: p. 305 (State of the Case.)

(a) Because the State failed to prove any material allegation in the indictment.

(b) Because the State failed to prove that such representations made by the plaintiff in error were false.

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(c) Because the State failed to prove that such representations caused the complaining witness, Blatchley, to part with his property.

(d) Because the State failed to prove that the statements made by Haines were untrue.

(e) Because the State failed to prove that the said Linwood Haines was insolvent at the time the stock was sold.

(f) Because the State failed to prove that Linwood Haines knew that the statements he was making were untrue.

(g) Because the State failed to prove that there was an intent to defraud.

(h) Because the State failed to prove all the allegations in the indictment.

4. Because the learned Court at the end of the defense failed to direct a verdict of "Not Guilty". p. 305.

5. Because the State did not prove that plaintiff in error was guilty beyond a reasonable doubt.

6. Because the learned Court allowed the witness, James Mercer Davis, to testify as to the condition of the Company from the financial statement, which had not been prepared by him or under his directions. p. 58, 62.

7. Because the learned Court allowed the State to introduce a check in evidence which was illegal. p. 10.

8. Because the learned Court in his charge to the jury charged "if such representations were made; whether the pretences were calculated to deceive a person of ordinary prudence." p. 306 lines 20-30.

9. Because the learned Court in his charge to the jury charged, "For example, the question of insolvency has been dismissed; and the meaning of insolvency; and I charge you that in the law of this State insolvency is the general inability to meet pecuniary obligations as they

mature, by means of either available assets or an honest use of credit." p. 307. 15-25.

10. Because the learned Court in his charge to the jury charged, "The question of a sale for cash has been discussed, and is a question involved in this case. A sale for cash is a sale for money in hand; at least such is the general meaning of the term. But the defendant has a perfect right to show what the meaning in the trade of a sale for cash was, providing you ascertain from the evidence in this case that the impression that he intended to convey to Blatchley on the day in question if he did attempt to convey any such impression was the one understood in the trade. Did he intend Mr. Blatchley to believe when he stated—assuming you find he did state—that this concern sold its goods for cash, that it was the trade custom of selling on ten, twenty or thirty days, or did he intend to convey to Blatchley the idea that a sale for cash was a sale for money in hand? That is for you to determine as a question of fact, what impression did this defendant intend Blatchley to receive from his statement, assuming he made any such statement." p. 307. 25-35. p. 308. 1-10.

11. Because the learned Court in his charge to the jury charged, "If you should determine—and as I say, it is for you to determine—that this defendant intended to have Blatchley believe that this concern sold only for cash in the sense that it bought and paid for goods at wholesale, not on time but with funds in hand, then you would be justified in drawing the inference that the trade term such as the defendant offers as a definition for the sale for cash was not the term which he intended to convey to Mr. Blatchley on the day in question, if he intends to convey an idea at all on the subject." p. 308. 10-20.

12. Because the learned Court in his charge to the

jury charged, "It is not necessary in this case for the State to prove the pretences alleged in this indictment in the exact words or in the precise words of the indictment. Entire verbal accuracy is not required; but what is required is that the idea conveyed to the defendant and that as set forth in the indictment must be identical. In other words, if the defendant by the statements made by him—assuming that you find that they were made—conveyed to Mr. Blatchley the idea that this concern was in a sound financial condition, when he was in the possession of present facts from which he knew it was not in a sound financial condition, and that he had no right to take the money or property of Mr. Blatchley in the circumstances." p. 308. 20-30.

13. Because the learned Court in his charge to the jury charged, "If you believe from all the evidence in this case that any one of these allegations alleged to have been the result of false pretence, and you believe it to have been made, was made and was believed by Blatchley, and became a controlling factor or influence in inducing him to give his money, and it was a false pretence, known to the defendant at the moment that he uttered it or made it, then this defendant could be convicted. In other words, gentlemen, it is not incumbent upon the State, the burden is not cast upon the State to prove all of these alleged false pretences." p. 309. 15-25.

14. Because the learned Court in his charge to the jury charged, "It is not necessary that the false pretence should have been the sole cause which moved the prosecutor to lend his name or to give up his property." p. 309. 30.

15. Because the learned Court in his charge to the jury, charged, "I have said that it is no concern of yours or mine what Blatchley's motive may be, whether he

hoped to make this machinery of the county a collection agency or not." p. 311. 10.

16. Because the learned Court in his charge to the jury charged, "Now if you have such reasonable doubt as to the guilt of this defendant it need not be a reasonable doubt as to all of the allegations." p. 314. 10.

17. Because the learned Court in his charge to the jury, charged, "But if you should have no reasonable doubt that there are certain allegations, as, for example, there was one allegation that was proven to your satisfaction beyond such reasonable doubt as I have defined to you, then you would be justified in returning a verdict of guilty." p. 314. 20.

18. Because the charge of the Court was in divers other particulars erroneous and inadequate.

19. Because the Court failed to charge the jury properly upon the question of evidence of good character. p. 315. 10-30.

20. Because the Court declined to charge: "If you find from the evidence that the statements alleged to have been made were mere expressions of opinion upon the part of the defendant then you should acquit." p. 318. 5.

21. Because the Court declined to charge: "Before you can convict under this indictment you must be convinced beyond a reasonable doubt that the statements alleged to have been made were actually made by the defendant and that the complainant relied upon them in investing his money." p. 318. 10.

22. Because the Supreme Court erred in affirming the judgment of the Court below.

ROBERT PEACOCK,
Attorney of Defendant in Error.

New Jersey Supreme Court

November Term, 1917

STATE OF NEW JERSEY,
Defendant in Error,

Vs.

LINWOOD HAINES,
Plaintiff in Error.

Submitted December 6, 1917; decided March 16, 1918.

Error to Monmouth Quarter Sessions.

Before Gummere, Chief Justice, and Justices Parker and
Kalisch.

For the State, Charles F. Sexton, Prosecutor of the Pleas.

For the plaintiff in error, Robert Peacock.

PER CURIAM:

The defendant below was convicted of obtaining money under false pretences from one Blatchley, the charge in the indictment being that he induced Blatchley to purchase stock in a corporation, called "Linwood Haines, Limited," upon the representation that said corporation was solvent and purchased for cash at wholesale, was in a sound financial condition, and that its shares were a safe and sound investment, which statements were false to defendant's knowledge.

The case is brought up on strict writ of error and also under Sec. 136 of Criminal Procedure act by certifi-

cate of the entire proceedings at the trial. There are no exceptions in due form to call for its examination in the former aspect, but the causes for reversal are identical with the assignments of error. They are twenty-one in number.

The first, that the Court excluded legal evidence for defendant, and the second, that it admitted illegal evidence for the State, point to no specific rulings, and consequently require no consideration of matters of evidence. It may be well, however, to say that we have looked at the testimony cited in the brief under this head, and find that the points made are without merit. In one instance there was no ruling by the court; as to conversations in another county prior to the procurement of the money, they were competent as leading up to the actual consummation of the transaction; and statements afterwards by defendant were competent as admissions by him. The statement by defendant at a later stockholders' meeting is in this category.

The motion to direct acquittal at the close of the State's case was rightly denied, as there was evidence for the jury of representations, charged in the indictment, inducing the payment by Blatchley, their falsity, and defendant's knowledge thereof.

A witness was permitted to testify that certain statements on a typewritten paper, as to the amount of stock outstanding, etc., were read in defendant's presence. This was properly admitted under the well settled rule about statements made in presence of a party and which he fails to controvert at the time.

The variance in date of the check (cause No. 7) was immaterial.

The remainder of the brief (there was no oral argument) is for the most part a restatement of causes for reversal without discussion.

Under cause No. 8, defendant attacks an instruction that the jury were to ascertain whether the pretences made were calculated to deceive a person of ordinary prudence. This was too favorable to defendant. The

indictment will lie even if they would not have deceived such a person. *Oxx v. State*, 59 N. J. L. 99.

The point made under cause No. 9 is that the Court failed to add to the charge on insolvency a certain comment on the evidence. No such comment was requested, nor, if requested, would the Court have been required to make it.

Cause No. 10 is merely stated and not argued. We see no merit in it.

Causes 11, 12 and 13 are not pressed.

Under causes 14, 15 and 16 the argument is that the State was bound to prove all the false pretences alleged and if there was reasonable doubt as to one of them there should have been an acquittal. This is contrary to the accepted rule.

2 Bish. New Crim. Law, Sec. 418 and cases.

2 Bish. New Crim. Proc. Sec. 171.

19 Cyc. 439, note 82.

State v. Vanderbilt, 29 N. J. L. 328, 337, last paragraph of the opinion.

Specifications 17 and 18 are not pressed. No. 18 is also general in character, that the charge "was in divers other particulars erroneous and inadequate." This of course points to nothing.

Similarly No. 19 is that "the court failed to charge the Court (jury?) properly upon the question of evidence of good character."

No. 20, a refusal to charge that if the statements were mere expressions of opinion, the jury should acquit, was covered in the main charge.

No. 21, and last, is a refusal to charge a request that would have required the jury in order to convict, to find beyond a reasonable doubt that all the statements charged were made and relied on. This, as we have just seen, is erroneous. It is sufficient to prove enough of the false pretences laid to show an offense though the rest are not proved.

2 Bish. New Crim. Proc. Sec. 171, *supra*.

The judgment will be affirmed.

MONMOUTH COUNTY QUARTER SESSIONS

THE STATE OF NEW JERSEY, vs. LINWOOD HAINES, Defendant.	}	ON INDICTMENT FOR OBTAINING MONEY, UNDER FALSE PRETENSES.	10
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Freehold, N. J., February 24, 1916.

GEORGE W. BLATCHEY, sworn for the State. 20

Direct Examination by Mr. Geran.

- Q. Where do you live, Mr. Blatchley?
A. At East Freehold.
Q. What is your business?
A. Farming, poultry farming and general farming.
Q. How long have you been a farmer?
A. All my life.
Q. And were you engaged in the farming busi- 30
ness on the 26th day of October, 1914?
A. Yes, sir.
Q. Do you know Linwood Haines?
A. Yes, sir.
Q. When did you first meet him?

A. On the 23rd day of October, 1914.

Q. 1914?

A. Yes, sir.

Q. Where did you meet him?

A. In the store in Camden, Linwood Haines Company Limited.

Q. Had you had a correspondence or business relationship with him prior to that time?

A. I had bought some stock in the Linwood Haines
10 Company Limited.

Q. Of whom did you buy that stock?

A. Mr. Richardson.

Q. How much did you buy of it?

A. \$100.

Q. When did you buy of Mr. Richardson?

A. On the 16th day of October, 1914.

Q. Had you known him before that?

A. No, sir.

Q. Where did you meet him?

20 A. Mr. Richardson?

Q. Yes, sir.

A. At my house. Oh yes, I knew him a few days before that, two or three days before that. He came in the field where I was working and broached that subject.

Q. Broached what subject?

A. That of selling stock in the Linwood Haines Company ; and I didn't have time that day to deal with him and I told him I would talk with him later. A few days later, I don't remember just how much, not more
30 than three or four days, I think, after that, he came to my house, and at that time I took the stock from him.

Mr. Reilly. I object.

(Objection sustained.)

Mr. Reilly. I move it to be stricken from the record.

The Court. It will be stricken from the record.

Q. But you went to Camden and saw Mr. Haines. I understand, on the 23rd of October?

A. Yes, sir.

Q. Where did you meet him there?

A. I met him in front of the office, in their store. 10

Q. In front of what office?

A. The office of Linwood Haines Company Limited, in their salesroom.

Q. Where is that, do you know the address?

A. I can't tell the number of the street; no, sir.

Q. What time did you get there?

A. It is my impression that it was between ten and eleven o'clock.

Q. Mr. Haines was at the store?

A. He was. 20

Q. Did you have a conversation with him?

A. Yes, sir.

Q. What was it about?

A. Why, about that stock that I had bought of him.

Mr. Reilly. We desire at this point to interpose an objection to this testimony. This conversation it seems occurred upon the 23rd. The allegation of the indictment, I understand it, is the 26th.

30

The Court. Well, I assume that any conversation that this defendant had with the complaining witness prior to the actual purchase of the stock upon the subject of the purchase of the stock and any representation made as to the value of it would be competent.

Mr. Reilly. If your Honor please, this conversation is alleged to have occurred at Camden.

The Court. I see. I so understand it.

Mr. Reilly. This court has no jurisdiction.

The Court. I understand that, but I assume that any representation that was made, even in Camden, if
10 the ultimate result or object of the conversation was not carried out until he visited Monmouth County on the 26th, would be competent. In other words, I do not see that a conversation containing any representations, whether it happened in New York or Philadelphia or somewhere else, with the object of carrying out the thing designed in Monmouth County, would be incompetent.

Mr. Reilly. Here, if your Honor please, is a witness attempting to make general observations and to
20 give general testimony, without any attempt thus far to connect whatever might have occurred in the way of conversation—

The Court. Mr. Geran, I understand that you intend to connect the conversations the witness is now being asked about with the episode in the county?

Mr. Geran. Yes, and with the ultimate purchase of the stock.
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(Objection noted for defendant as ground of appeal.)

Q. What was said about the stock which you had bought?

(Objected to. Objection sustained.)

Q. Did you buy stock after the 23rd of October?

A. Yes, sir.

Q. And was your conversation in any respect concerning the purchase of more stock or stock in the future?

A. No, sir.

Mr. Peacock. I object to that as leading. What was the conversation about that? 10

The Court. The objection comes late. He has answered it.

The Witness. What was the question?

Q. What was the conversation about future stock or about the purchase of other stock?

Mr. Reilly. Held when, Mr. Geran? 20

Q. The 23rd of October, at Mr. Haines' store in Camden.

A. There was nothing said about further purchase of stock at that time. The first that he ever spoke to me of buying stock was at my house on either the 26th or 27th day of October following the visit at Camden.

Q. I understood you to say—

Mr. Reilly. Then, if your Honor please, I move 30 that this previous testimony be stricken out.

The Court. The motion is well taken. The testimony will be stricken from the record.

Q. I understood you to say that in Camden you had a conversation with Mr. Haines concerning the purchase of stock there; is that so?

A. Stock that I had just purchased.

Q. Did you have a conversation with him at that time concerning the purchase of stock at any future time?

A. No, sir; I did not.

Q. What other subject matter did you talk on at
10 that time in Camden?

(Objected to.)

The Court. Yes, I think that is not material what he discussed. Why not bring it right down to his own home?

Q. Did you have any conversations there concerning the nature of his business or what he did?

20

(Objected to. Objection sustained.)

Q. On the 26 of October did you see Mr. Haines?

A. It was the 26th or the 27th of October. He came to my house.

Q. At what time?

A. It was, I think, soon after one o'clock in the afternoon.

Q. What was your conversation at that time?

30

A. Mr. Haines said to me, "We have decided to let a few more selected ones come in on the ground floor and buy stock on the same grounds that you bought your first hundred dollars, to give you two shares of common stock for each share of preferred stock you buy." And we had a long conversation. He was there for two

hours, I presume, and he said a great many things.

Q. Well, tell us what he said.

A. Well, he went on first to tell about what a wonderful business they were doing. He said that they were doing a great business and that their business was increasing all of the time, and they had been compelled to enlarge their business and create two branches, one at Flemington, and I am not sure where the other was, I think he said at Pemberton; but one was at Flemington; and they proposed erecting a warehouse and having a
10
branch in Freehold, and they wanted twenty-five people. twenty-five stockholders from around Freehold, to buy stock and form what he termed the board; and which had been the understanding, the stock I had bought before, we could not buy but \$100 each. And he said that they had decided to allow a few of us, a few selected ones, to take more stock at the same rate and come in, as he termed it, on the ground floor. And he told what a profitable business it was. He said that they bought all of their goods for cash and they sold for cash; and he
20
said that the money, he says, "Now you can see that as we turn our money about fourteen times a year," he says, "you can see what an immense profit we make in the course of a year if we only make a small per cent. on it each time." And he compared it with the Sears-Roebuck concern, mail order house, he said they were doing business on the same principle of the Sears-Roebuck concern, and he said that his object was to bring the business up to a standard where the preferred stock
30
would be worth its face value and then his fortune was made. And that was where he was looking for his remuneration. And when the question was asked him about the safety of the concern he says that, "In the way that we do business failure is practically impossible." He says, "We buy for cash and we sell for cash and in

our method of doing business failure is practically impossible." He says, "There has never been a mail order house doing business in this way that has been known to fail."

Q. Did he tell you what the nature of the business was that they were engaged in?

A. Well, I knew what the nature of the business was.

Q. What was it?

10

A. It was a mail order house selling goods of nearly all kinds. I had just been there only three or four days before and bought about a hundred dollars worth of goods. He said also that they gave a rebate of five per cent. to all of the stockholders of the company.

Q. Was anybody else present at the time you had this conversation with him?

A. Yes, sir.

Q. Who?

A. Mr. Richardson, the man that I bought the
20 first stock of.

Q. He was present on October 26th?

A. He was present; yes, sir; and my wife was present.

Q. Did your wife ask him any questions in your presence?

A. She asked him one question in particular that I remember.

Q. What was that?

30

(Objected to.)

The Court. Why?

Mr. Reilly. The wife is here to testify.

The Court. No, all the parties, including the defendant, were present.

Mr. Reilly. I will withdraw the objection.

The Court. You may answer.

A. She asked him if the company was a safe investment if there was no danger, if there was not great danger of losing the money that was invested. 10

Q. Did he make reply to that?

A. He did.

Q. What did he say?

A. He said that in the way they did business it was a practical impossibility for failure; practically impossible to fail in the way that they did business. And he also said that there had never been a mail order house doing business in the way that they did that had ever been known to fail.

Q. Did he at that time say anything in connection 20 with the solvency of his business?

(Objected to as leading.)

The Court. It is obviously leading.

Q. Did he say anything further in connection with his own business?

A. He said a great many things. Now I don't know that I can recall all that he did say. 30

Q. Well, as a result of that conversation what did you do?

A. I bought another hundred dollars worth of stock.

Q. Did you pay for it?

A. I gave him my check.

Q. Have you the voucher with you?

A. I have.

Q. Produce it.

(Witness produces paper.)

Q. Is that your signature?

A. Yes, sir.

10 Mr. Geran. The witness produces a check No. 2423, dated October 27, 1914, payable to the order of Linwood Haines Company Limited.

Q. Is that the check that you gave?

A. Yes, sir.

Mr. Reilly. Have you completed it, about the endorsement?

20 The Court. You have not completed it on the record, Mr. Geran. Signed by and endorsed by.

Mr. Geran. Signed by G. W. Blatchley, drawn on the Central National Bank of Freehold, and is endorsed, "Pay to the order of the First National Bank of Camden, Linwood Haines Limited of America."

"Pay to the order of 3-18, Corn Exchange National Bank, 3-18 Phila., Pa. All prior endorsements guaranteed."

30 "56-86, 1st Nat. Bank, Camden, N. J., 55-86, Charles Lafferty, Cashier."

"Pay to the order of any bank or trust company, prior endorsements guaranteed, October 28. 45 Corn Exchange National Bank, 3-18 Phila., Pa., 3-18 V. W. Corson, Jr., Cashier."

"Credit National Freehold Banking Co., Freehold, N. J., A. Sutphen, Cashier."

Q. Did you get anything in return for this check?

A. No, sir; except a receipt. He gave me a receipt at the time.

Q. Have you got the receipt?

A. The Prosecutor has the receipt.

Q. Did you ever get any stock?

A. No, sir.

Q. Was there any arrangement made or any under- 10
standing between you and him as to the issue of stock for this?

A. I was to have my certificate in a few days.

Q. What certificate or certificates were you to have?

A. Why, certificate of stock of the Linwood Haines Company.

Q. Calling for what?

A. Calling for twenty, five dollar shares, I believe, is the way it was worded. Twenty, five dollar shares in 20
the Linwood Haines Company.

Q. Common or preferred or what?

A. Preferred stock; and I was also to have a certificate for two shares of common stock for each share of preferred that I bought.

Q. Did he say at that time why he did not issue the stock?

(Objected to as leading.)

30

The Court. Yes, I think it is leading.

Q. What did he say about the stock itself?

Mr. Reilly. I think the Prosecutor ought to be cau-

tioned. He suggests the answer that he wants. We object because it is leading. It has made known to the witness just what the Prosecutor wants and his next question can be answered.

A. There are three or four receipts there from that company.

Q. I show you a paper dated October 26, 1914, and ask you what that is.

A. It is a receipt for the money I paid him that
10 day, a receipt for \$100.

Mr. Reilly. I object and move that the last part of the answer be stricken out. If it is a receipt it will speak for itself.

The Court. Yes, the receipt will speak for itself.

Q. It purports to be signed by one J. W. Richardson.
son.

20 A. That is a different transaction.

Q. Was that signed by Mr. Richardson in your presence?

A. No, sir; I wasn't present when he signed it.

Q. Where did you get it from?

A. He handed it to me.

Q. Who was present when he handed it to you?

A. My wife. I stepped out of the room while they were making out the receipt. I stepped out into another room; and when I came back the receipt was handed to
30 me.

Q. You and your wife were there, I understand?

A. Yes, sir.

Q. Who else was there?

A. Mr. Richardson and Mr. Haines.

Q. Was Mr. Haines present?

A. Yes, sir.

Q. Did you get any other paper or receipt or anything else at all for the receipt which you gave?

A. No, sir.

Q. And have you received anything since that time?

A. No, sir.

Q. Did you receive any circulars or other printed matter from the Haines Limited Company prior to the purchase of this stock from Mr. Haines?

10

(Objected to.)

The Court. How do you think it is material, Mr. Geran?

Mr. Geran. My idea about its materiality is that if he did receive any circular or printed matter in connection with the issue of stock, the plan of the issue of stock, the circular containing descriptive matter or any other thing in connection with the stock of the Haines Company prior to the time of the purchase of this stock, that that circular or whatever the matter was would have or might have some influence upon this witness' mind in the purchase of stock and in the nature of certain representations made by the Linwood Haines Company Limited prior to the time of the purchase.

20

The Court. On that statement I do not see why Mr. Reilly objects.

30

Mr. Reilly. That is not included in the indictment and he would have to go a step further and bring home the mailing of that circular to the defendant.

The Court. If the misrepresentation was occasioned by the circular and not by the defendant's statement then the defendant undoubtedly could not be held responsible.

Mr. Reilly. Just as I say, he has got to connect it with the defendant. Therefore it is not material.

The Court. I am inclined to agree with you. The
10 objection is sustained.

Q. When is the last time you had a talk with Mr. Haines concerning the stock?

A. We had no conversation about the stock I believe after that date until—

Mr. Reilly. What day?

A. The day that I purchased the stock, the 27th
20 day of October.

Mr. Reilly. What day was that?

The Court. The 27th day of October, he said.

Mr. Reilly. Then, if your Honor please, if it is after the purchase of stock, which is alleged in the indictment to be the 26th, it is immaterial.

30 The Court. The date of the check is the 27th, isn't it?

The Witness. The date of the check is the 27th.

Mr. Reilly. And the date of the receipt is the 26th.

By the Court.

Q. On what date was it that he came to your place, the 26th or the 27th?

A. The only means I have of remembering is the date of the papers. I never made a memorandum of it.

Q. Well, the receipt is dated the 26th and the check the 23rd. How do you account for that, if that be true? I haven't seen then.

A. I didn't intentionally—

10

Q. No, no. Yes, the receipt appears to be dated October 26th. Was that the day that Mr. Haines was at your place?

A. I couldn't say which day it was.

Q. Either the 26th or the 27th?

A. Yes, I supposed I was dating the check on the day it was given. There was no reason for dating it on any other date. I supposed I was dating it on the date that it was given.

20

The Court. I will admit this question. You may answer.

By Mr. Geran.

(Question repeated.)

Q. When is the last time you had a talk with Mr. Haines concerning the stock?

30

The Court. You hadn't finished the answer. I will permit you to finish.

A. Until the day that he was brought here to Freehold, or arrested, brought here to Freehold.

Mr. Reilly. That, if your Honor please, is clearly objectionable. I move the answer be stricken out.

The Court. Well, I am not so sure that I can strike it out. I don't know what the witness is going to say, but if the defendant said anything in the nature of an admission under the charge in the indictment I will permit the witness to testify.

- 10 Mr. Reilly. But here is a bald charge of the commission of an offence on the 26th of October, 1914, and it is clear in the law that anything that may have occurred after is not the subject of inquiry in this trial.

The Court. Unless it be in the nature of an admission.

Mr. Reilly. Well, that is a horse of another color.

- 20 The Court. That is just what I am saying to you. That is the only reason that I am admitting it. The question is admitted.

(Objection noted for defendant as ground of appeal.)

The Court. I will strike it out if it does not relate to that.

- 30 A. I don't remember that there was anything said about the stock at that time. He came to my house. May I—

Q. Yes, go ahead.

A. The day that he came here to Freehold under arrest he called me up on the telephone—

Mr. Reilly. If your Honor please, may we not have dates specified?

The Court. He says the day that he came here under arrest.

Mr. Reilly. What day was that?

Q. Do you know what he was doing here on this particular day? 10

A. It was the date he was brought here under arrest, and I don't know the date of it.

By the Court.

Q. Brought here for what purpose?

A. He was arrested on the charge of getting money under false pretences.

Q. I understand, but what was he doing here on the day you spoke of, do you know? 20

A. No, I don't know anything about it, only that Mr. Smith here went to Camden and brought him here to Freehold.

Mr. Reilly. Now I move that that be stricken out. What does he know about what Smith did?

The Court. I am going to permit the witness. You may have an exception. You may proceed. Go on. 30

(Objection noted for defendant as ground of appeal.)

By Mr. Geran.

Q. What did he say?

A. He called me on the phone and said he would like to have a talk with me; and I said all right—

Mr. Reilly. If your Honor please, how about telephone conversations? Called him on the phone and he had a conversation.

10 A. We had no conversation over the phone.

The Court. The witness states that he called him, meaning the defendant. Now if you want to examine him as to who it was I will permit you to do it.

The Witness. Mr. Haines called me on the phone—

By Mr. Reilly.

Q. How do you know it was Mr. Haines?

20 A. He said it was. He said it was Linwood Haines

Q. Is that the only knowledge you had?

A. Yes, except from the sound of his voice.

Q. Where did he say he was?

A. He said he was in Freehold.

Q. You at that time recognized the sound of his voice?

A. I did; yes, sir.

Q. What sort of a sound had it?

30 A. Well, about the same sound that it had any other time.

Q. Well, what kind of an intonation? Was it high, squeaky voice, falsetto voice or was it a deep bass?

A. Well, it was not a deep bass voice.

Q. How many times had you conversed with him before?

A. Oh, three or four times.

Q. How many times over the phone?

A. Never before.

Q. That was your initial—

The Court. Now, gentlemen, don't let's waste time on it.

10

By the Court.

Q. As a result of some information what did you do?

A. I received no information.

Q. Well, what happened?

A. He wanted to come to my house and talk to me.

Q. Did he come to your house?

A. He came to my house.

20

Q. Proceed and tell us the conversation.

A. He came to my house, he came in and sat there and talked, I presume, for an hour. And of course I couldn't begin to tell a tenth part of the conversation, but he plead innocence of any wrongdoing; and he said he didn't know how it was going to make it any better for us making a criminal of him. That was the substance of all that he said concerning the matter in Freehold.

Q. Had you received the stock in the meantime?

A. I had not received any. I never received any stock.

30

Q. Do you know why you didn't receive the stock?

A. No, sir.

Q. Did Mr. Haines tell why you didn't receive the stock when he visited you?

A. No, sir.

Q. And you have no present knowledge as to why you didn't receive the stock?

A. I had what I supposed was knowledge. I don't know whether it would be considered so in law or not.

Mr. Reilly. I object to the supposition.

The Court. No, not unless you know. You can't
10 suppose.

A. I knew that the company was in financial embarrassment.

(Objected to.)

The Court. Strike it out.

By Mr. Geran.

20

Q. Mr. Blatchley, the day that you gave the check to the Linwood Haines Company Limited, was that the day that you received the receipt?

A. It was.

Q. And both transactions were on the same day?

A. The check and the receipt?

Q. Yes.

A. Yes, sir.

30

Mr. Geran. I offer the check and the receipt.

Mr. Reilly. We object to the offer.

The Court. Why?

Mr. Reilly. Here is a charge against Linwood Haines personally. Here is a check payable to the order of Linwood Haines Company Limited, in other words, to a corporation. The receipt seems to have been signed by Mr. Richardson and calls for a receipt of \$100. Presumably the check represents the \$100. It is fair, if your Honor please, in the circumstances to assume that if a sale of stock was made at all it was made by the man who gave the receipt, Richardson. How can it be said that this receipt or this check can bind Linwood Haines or is 10 evidence against him?

The Court. Has it yet appeared what connection Linwood Haines had with the Linwood Haines Company Limited?

Mr. Reilly. Not as yet; no, sir.

The Court. I wish the Prosecutor would ask this witness what connection he had with it. 20

Q. Did Mr. Haines tell you or did you know what connection Linwood Haines had with the Linwood Haines Company Limited?

(Objected to as leading.)

The Court. Oh, no, that is not leading. That does not suggest the answer at all. 30

Mr. Reilly. "Did you know or did Linwood Haines tell you?" There are two questions in one. "Do you know what position he held?" might go.

The Court. You may separate them. Just separ-

ate the questions. Do you know what connection he had with the Linwood Haines Corporation?

A. I do.

Q. What

A. President of the company.

Q. Was he president of the company on the day that he visited you?

A. He was. At least he told me he was.

Q. Did he say who the other officers of the company were?

A. I don't remember that he did.

Q. Did he say anything about the holding of the stock?

A. About his holding stock?

Q. Yes.

A. Yes, sir.

Q. What did he say?

A. He said that his holdings were all in common stock and that he depended on the rise of the common stock for his remuneration. He said that his holdings were all in common stock, as the aim was to bring the common stock up to par value and then his fortune was made.

Q. Did he say anything about the preferred stock and who held it?

Mr. Reilly. Do I understand, if your Honor please, that this series of questions is to be permitted as to the admissibility of this check and receipt?

30

A. I don't remember that he said who held the preferred stock but he spoke particularly of his holdings being in common stock, and that that was the way that he intended to get his remuneration for his labor in the company, was by bringing the common stock up to par value

and then his fortune would be made; and in bringing that up of course we were to get—we would have then \$300 for the \$100 that we had paid for the preferred stock.

Q. Did he tell you what the capitalization of the stock was and what proportion was owned by him?

A. I think he told me but I don't remember the amount.

Q. At the time the check was given who actually took the check or to whom did you give it? 10

A. I am not sure whether I handed the check to him or whether I handed it to Mr. Richcardson. I know Mr. Haines did all the talking and Mr. Richardson hardly ever said a word during the afternoon. And I couldn't say positively who I handed the check to.

Mr. Reilly. I move that the latter portion of his answer be stricken out, the two last paragraphs. This witness is constantly volunteering.

The Court. Well, with respect to what? That is rather a broad suggestion. 20

(First part of answer repeated by stenographer.)

Mr. Reilly. There is a complete answer to the Prosecutor's question.

(Remainder of answer repeated.)

30

Mr. Reilly. That portion of the answer I move to strike out.

The Court. No, I will allow that to stand.

(Objection noted for defendant as ground of appeal.)

Mr. Geran. That is all, if your Honor please. Now an offer is pending.

The Court. The check and the receipt will be admitted and you may have an exception.

10 (Objection noted for defendant as ground of appeal.)

(Check and receipt marked Exhibit S 1 and S 2.)

Cross Examination.

By Mr. Peacock.

Q. Mr. Blatchley, how long have you known Mr. Haines?

20 A. Since the 23rd day of October, 1913.

Q. Prior to the 23rd day of October you were a stockholder in this company, weren't you?

A. I was; yes, sir.

Q. How many shares of stock did you hold in the company?

A. Twenty \$5 shares.

Q. How many shares?

A. Twenty \$5 shares.

Q. Then you had twenty shares?

30 A. In the company, yes.

Q. Preferred or common stock?

A. Preferred.

Q. Did you hold any common stock?

A. Yes, sir.

Q. How many?

A. Two shares of common stock for each share of preferred stock.

Q. And you went to Camden on the 23rd of October for what purpose?

A. To become acquainted with the establishment and to buy goods at a discount.

Q. And how long did you spend in Camden examining the plant?

A. I got there, I think, between ten and eleven and I don't remember what time we came away; perhaps 10 three or four o'clock.

Q. Did you go through the plant?

A. I did.

Q. Examining the working conditions?

A. I went through the different sales-rooms, yes, sir, and bought some goods.

Q. Did you ask any questions concerning the condition of the corporation or company?

A. No, sir.

Q. You had that privilege as a stockholder, didn't 20 you?

A. I suppose so.

Q. Did you ask any questions concerning the books of the company?

A. I suppose so.

Q. Do you say you did or didn't?

A. I did not, no.

Q. And as a stockholder you had that privilege, didn't you?

A. I don't know whether I did or not. 30

Q. Did you attend any meetings of the stockholders?

A. I attended one afterwards, a few days after.

Q. And when was that?

A. Around the—I think it was the 18th day of November following.

Q. From the time you made the first purchase of stock until you made the second purchase did you attend any stockholders' meetings?

A. No, sir; I did not.

Q. You had notice of such meetings, didn't you?

A. No, sir.

10 Q. Did you receive notice of any stockholders' meetings in the time that you were a stockholder?

A. No, I don't remember of receiving any notice until the notice of the meeting on November 18th following.

Q. That was subsequent to the purchase of the stock?

A. Yes.

Q. Was that the first day that you had met Mr. Haines, on October 23rd?

A. Yes.

20 Q. He was a stockholder of the corporation the same as you were, wasn't he?

A. I suppose he was.

Q. And you next saw him when?

A. I next saw him at my house on the day that I gave that check, the 27th.

Q. You are sure the day you gave the check and not the day he gave the receipt?

A. I am not positive which day it was. They were both given the same day.

30 Q. They were both given the same day?

A. I think I can say positively that I gave the check on the 27th.

Q. And you know you received the receipt the day you gave the check?

A. I do.

Q. And you received the receipt from Mr. Richardson?

A. Yes.

Q. You must have given Mr. Richardson the check then, when you got the receipt from him, didn't you?

A. I don't know which one.

Q. Well, it is possible to remember that you must have given Mr. Richardson a check if you received the receipt from him; isn't that true? 10

A. I couldn't say, I tell you.

Q. You won't deny that you didn't give Mr. Richardson a check, will you? This took place at your home?

A. It did.

Q. And Mr. Richardson and Mr. Haines were there?

A. Yes.

Q. And it was on the afternoon of October 27th, you say? 20

A. Yes, sir.

Q. When they first came there they were talking about your visit to Camden, weren't they?

A. I presume they were.

Q. And you had quite a conversation concerning your visit, what you saw at the store and the working conditions and so forth; that is true, isn't it?

A. Yes, sir.

Q. And you went to Camden for the specific purpose of acquainting yourself with the working of the corporation, didn't you? 30

A. No, sir.

Q. You didn't?

A. Not the specific purpose.

Q. Well, one of the purposes?

A. I went to buy goods.

Q. And while you were there you did acquaint yourself with the workings of the concern?

A. Somewhat, and bought some goods.

Q. Why did you go there in the first place?

A. Why?

Q. Yes.

A. Because Mr. Richardson offered me or gave me a free ticket to Camden and a promise of ten per cent.
10 discount on all the goods I bought that day.

Q. And that is what all stockholders received, didn't they?

A. They said so; yes, sir.

Q. Then you received that discount on the goods that you purchased, didn't you?

A. I did.

Q. And you went there at the invitation of Mr. Richardson and not Mr. Haines; that is right, isn't it? He gave you a ticket?

20 A. I don't remember—the ticket came from the firm. Mr. Richardson didn't give me any ticket.

Q. Mr. Richardson invited you down there, you say?

A. Mr. Richardson said that we would be invited there in a few days and our fare would be paid and we would have ten per cent. discount.

Q. You went down there with a party of stockholders, didn't you?

A. I did.

30 Q. And the conversation at your house, he talked with you concerning the workings of the corporation, didn't he?

A. Yes, sir.

Q. He told you about different stockholders and the stock he held, didn't he?

A. I don't know as he did anything only himself.

Q. And he told you his ideas to do everything for the company's interest, didn't he?

A. He did.

Q. And this conversation took place in the parlor of your home?

A. Yes, sir.

Q. And he came up here for the purpose of getting some men together as the founders up in Freehold, didn't he, to get some stockholders here to open a branch office 10 here?

A. Yes, he wanted to get twenty-five stockholders.

Q. And at that time you knew that they had some stockholders in Freehold, didn't you, of the corporation?

A. Yes, sir.

Q. How many stockholders of the corporation did you know that lived up here or in the vicinity?

A. Oh, I couldn't tell just how many I knew. I knew several of them.

Q. And they were to see you about selling some 20 stock to get some capital for the corporation; that was the object of their visit, wasn't it?

A. How is that?

Q. They came to see you about selling some stock?

A. Yes, sir.

Q. So that they could get more capital for the running of their business?

A. Yes, sir.

Q. And he told you that the more capital they had the better it would be for the stockholders, didn't he? 30

A. I don't know whether he did or not.

Q. Well, did he or didn't he?

A. I couldn't say.

Q. And didn't he tell you that during the summer months business fell off considerably?

A. I don't remember.

Q. You don't remember? Well, do you deny that he told you that?

A. No, I don't deny it because I don't remember.

Q. And he said that he decided to open a branch at Freehold instead of depending upon their main plant for business? Do you forget that or do you remember that?

A. I don't remember saying it just as you worded
10 it.

Q. And did he tell you that by opening a branch office here that they would get the small trade?

A. No, sir.

Q. He didn't tell you that?

A. No, sir.

Q. What did he tell you that they needed a larger amount of capital for?

A. As they intended to start a warehouse in Freehold, as their business was increasing all the while and
20 they wanted to start a warehouse in Freehold.

Q. And as the summer months had passed the things looked brighter for the company. He told you that, didn't he?

A. Not that I remember.

Q. Do you mean that he didn't tell you or is it possible that he told you and you have forgotten?

A. As long as I don't remember I can't tell you whether he did or not.

Q. You won't deny that he did tell you that, will
30 you?

A. No.

Q. You didn't ask him anything concerning the financial standing of the company, did you?

A. My wife asked him the question.

Q. Because you as a stockholder knew about the company, didn't you?

A. No, I didn't know anything about it. I hadn't been a stockholder only from the 16th to the 27th.

Q. And he said to you, "If we buy for cash we can sell for cash," didn't he?

A. He says, "We buy for cash and we sell for cash."

Q. Didn't you state on your direct examination that he said, "If we buy for cash we can sell for cash?" 10

A. No, sir; I don't think I did.

Q. And isn't that the words he used, "If we have a large capital and buy for cash we can sell for cash?"

A. No, sir.

Q. He didn't say that?

A. If I so testified I misspoke.

Q. You knew the nature of the business, didn't you?

A. What do you say?

Q. You knew the nature of this business? 20

A. Oh, yes, I knew it was a mail order business.

Q. Knew it was a mail order business.

A. Yes.

Q. Was your wife present during the entire conversation?

A. She was.

Q. And she didn't leave the room at any time at all?

A. I think not.

Q. She asked him if the company was a safe investment? 30

A. She did.

Q. And what did he say?

A. He said that it was and said that in the way

that they did business a failure was practically impossible.

Q. He said that the way they did business failure was practically impossible?

A. Yes.

Q. And that is all the conversation you had with him concerning the corporation being a sound and safe investment, wasn't it?

A. Oh, no.

10 Q. That subject hadn't been broached until your wife asked him the question, had it?

A. No, not that part of it.

Q. And that was after you had purchased the stock?

A. Oh, no; no, sir.

Q. It was not?

A. No, sir.

Q. Well, when did you purchase the stock? What stage of the conversation?

20 A. At the last part of the conversation.

Q. And was that when you had finished your conversation with Mr. Haines, before your wife had asked any questions?

A. No, sir; it was during our conversation.

Q. During the conversation?

A. During the conversation.

Q. And you purchased the stock from Mr. Haines or from Mr. Richardson?

A. I supposed I purchased it from Mr. Haines.

30

The Court. Oh, no; you can't say that.

Mr. Peacock. I move it be stricken out.

The Court. Yes, strike it out. It is not a matter of supposition.

By Mr. Peacock.

Q. What did you do?

A. What did I do?

Q. Yes. From whom did you buy the stock?

A. I couldn't tell you who I bought it of. I made the check out payable to the Linwood Haines Company. 10

By Mr. Peacock.

Q. Then as a matter of fact you don't know from whom you did purchase the stock, do you, Mr. Blatchley, from Mr. Haines or Mr. Richardson, do you? Isn't that true?

A. I supposed I was buying it from Mr. Haines.

The Court. Oh, no.

20

Q. Not what you supposed, what you know.

The Court. You are speaking of your own notion. We are dealing here with legal information.

(Question repeated.)

A. Yes, I do know.

30

By the Court.

Q. Now of whom did you buy it?

A. I bought it of Mr. Haines.

By Mr. Peacock.

Q. Your memory is getting better. When you purchased the first shares of stock you received an acknowledgment of it from the corporation, didn't you, and not from Mr. Haines?

A. I received a receipt.

Q. Received a receipt from the corporation, didn't you, Linwood Haines Limited?

10 A. Yes.

Q. Not from Mr. Haines individually?

A. Not from Mr. Haines individually.

Q. Have you that receipt with you?

A. The Prosecutor has it.

Mr. Peacock. Will you produce it, Mr. Prosecutor?

(Paper produced by Mr. Geran.)

20

Q. And that stock was purchased from Mr. Richardson, wasn't it?

A. Yes, that stock was purchased of Mr. Richardson, the first stock.

Q. I show you a receipt dated October 16, 1914, signed by J. W. Richardson. Is that the receipt you received?

A. That is the receipt that I received for the first stock that I bought.

30

(Paper marked Exhibit A for Identification.)

Q. And you received an acknowledgment from the company for the shares of stock, didn't you?

A. No, sir.

Q. Then you didn't get any stock for the first?

A. No, sir; I never had any.

Q. All you had is the receipts to show for your shares of stock?

A. Yes, sir.

Q. That made you a stockholder?

Mr. Geran. That is a legal question, I presume.

The Court. I presume that is so.

10

Q. Did you receive any acknowledgment at all from the company?

A. Nothing except the receipt. I never received any certificate.

Q. Didn't you receive a letter from the company acknowledging your check, signed by the secretary of the company?

A. I don't think I received any—

Q. Is it possible that you received an acknowledgment from the company that it had been credited to you as a stockholder; isn't that true?

A. I couldn't say.

Q. You don't remember that?

A. No, sir; I don't.

Q. And that was only ten days prior to your last purchase? That is so, isn't it?

A. Yes.

Q. And you remember distinctly everything that happened at the last purchase?

30

A. Yes.

Q. But you can't remember ten days ahead of that?

A. I remember a good many things ten days ahead of that, yes.

Q. Did you give the acknowledgment to the Prosecutor?

A. I don't remember.

Mr. Peacock. Will you look, Mr. Smith, and see if you have any?

The Witness. If I have an acknowledgment probably the Prosecutor has it.

10

Q. If you have it you gave it to the Prosecutor?

A. Probably I did, yes.

Q. You gave him all the papers you had connected with this case?

A. No, sir; not all of them.

Q. Oh, then you have other papers?

A. I have the checks, yes.

Q. Have you all the papers here?

A. I have all the papers with me that I have in my
20 possession.

Q. Will you find out whether you have an acknowledgment of the company signed by the secretary?

A. I have not.

Q. I don't know whether I asked you the question or not whether you attended all the stockholders' meetings prior to October 26th.

A. No, sir.

Q. Excepting November 18th; is that the only
one?

30 A. That is the first one.

Q. At the time you purchased this stock from Mr. Haines you said Mr. Haines said he would let a few of the old stockholders in upon the same ground as before?

A. Not in those words.

Q. He didn't say that?

A. Not in those words.

Q. And you didn't say that in your direct examination here today?

A. Not in those words.

Q. Well, what were those words?

A. He said, "We have decided to let a few selected ones in on the ground floor and take more stock at the same terms that you had your other stock."

Q. And on the same conditions as you had the other stock? 10

A. Yes, the same terms and conditions.

Q. And you knew of those conditions?

A. I did.

Q. And it was on those conditions and those terms that you purchased this stock, wasn't it?

A. Yes.

Q. You purchased the stock upon your knowledge of the conditions and terms of the corporation, didn't you?

A. No, sir. 20

Q. You said you knew them?

A. I did, but I didn't know the financial standing till he told me.

Q. You knew as a stockholder that you had the right to know that and you could have found it out upon the occasion of your visit to the company, couldn't you?

A. I bought the first stock merely as a gamble.

Q. Did you buy the second as a gamble?

A. I didn't stop to inquire whether the firm was a solid firm or not. 30

Q. And that was the way you purchased the second stock, wasn't it?

A. No, sir; I purchased that at the recommendation of Mr. Haines, president of the company.

Re-direct Examination.

By Mr. Sexton.

Q. Now I don't want to repeat; I wasn't here the first part. I want to ask, Mr. Blatchley, do you know what became of this company, as to its finances?

A. I know what the receiver of the company told me.

10 Q. Well, it went into the hands of a receiver?

A. Went into the hands of a receiver?

Q. When?

A. About the time of the—it was about the time of the stockholders' meeting that I attended on the 18th of November. That was the call I had, to come to a stockholders' meeting, for they were financially embarrassed.

Q. And when did you receive the call, as you designate it?

A. A few days before the 18th. I don't remember
20 how many days' notice.

Q. How long was that after you had purchased the last stock?

A. The last stock was purchased on the 27th of October.

Q: Did you attend the meeting?

A. I did.

Q. And was Mr. Haines present?

A. He was.

Q. Any statement made by him as to the financial
30 condition of this concern at that time?

A. There was a statement purporting to be—

Mr. Peacock. I object. This is not proper re-direct examination.

The Court. Yes, I will permit the examination as omitted questions, but the witness answered, "Some statement purporting to be"—Your question is, what did Mr. Haines say if anything about the financial condition of the company at this meeting?

Q. Was Mr. Haines present at the meeting?

A. He was, and presided.

Q. Was a statement read in his presence showing the financial condition of this company? 10

A. He read a long statement himself.

Q. He read a statement?

A. He did.

Q. And what did the statement contain that he read?

Mr. Sexton. I think that is admissible.

The Court. Yes, what he heard Haines read.

20

Mr. Reilly. If he knows.

The Court. Yes, if he knows, of course.

A. It was a long statement, and I remember that the statement contained the fact that the stockholders, some of the old stockholders had become dissatisfied and thought that the—

Mr. Reilly. If your Honor please, in my view this examination is entirely illegal. Here is something occurring upon the 18th of November, over a month subsequent to the allegation— 30

The Court. No, it is not a month. The sale is

made on the 27th of October and this meeting was on the 18th of November.

Mr. Reilly. But the alleged sale was made on the 16th of October.

The Court. But it is admissible, Mr. Reilly, upon this theory; that it tends to establish the fact that such representations as were made, if they were made—and
10 that is for the jury, to say whether they believe they were made or not—by Mr. Haines to establish the fact that these statements were misrepresentations.

Mr. Reilly. And is your Honor going to permit this rambling statement on the part of this witness—

The Court. No, I am permitting this witness to recall what Mr. Haines himself said in reference to the insolvency of the company.

20

Mr. Reilly. And from a written statement. Now where is the written statement?

Mr. Sexton. Mr. Haines read it.

Mr. Reilly. All right. Produce it.

Mr. Sexton. That is one of the exceptions. He is stating what Haines read.

30

Mr. Reilly. But he is not stating it.

The Court. You may produce the paper if you see fit for the purpose of showing that Haines did not read

anything of the sort, but this witness is stating verbally what he heard Haines verbally state.

Mr. Reilly. If your Honor please, I think that he might be permitted to state that a paper was read, and now that is as far as he can go.

The Court. Suppose Mr. Haines had made a verbal statement without reference to any paper whatever? 10

Mr. Reilly. Well, he doesn't say so.

The Court. Do you mean to say that what Haines said would not be admissible?

Mr. Reilly. But he doesn't say so. He said he read a statement. Now as I understand the rules of evidence he might be permitted to say that he read a written statement. Now call for the statement. If we do not produce the statement then perhaps he can testify 20 from memory as to what it contains.

The Court. I think you are now invoking the rule as to secondary evidence.

Mr. Reilly. Exactly. His evidence is secondary evidence as far as the statement is concerned.

The Court. His evidence is not secondary. It doesn't make much difference whether Haines read or re- 30 cited a speech on that occasion. This witness might state what he recalls of that subject. I will permit him to say what he heard Mr. Haines state on the subject.

Mr. Reilly. Will your Honor take a little law on the subject?

The Court. Yes, I will take all the law you want to give me.

(Mr. Reilly cites authorities.)

10 The Court. But now you are diverting your argument from the previous questions.

Mr. Reilly. But I am not diverting it from the fact that the present testimony is objectionable.

The Court. You see this witness may be used by the State for the purpose of showing that the declaration made by Haines on the 27th day of October, which was the inducing cause for his investing, was in fact not true, and that the evidence of the truth comes from
20 Haines himself in the meeting which was held on the 18th, or twenty days later.

Mr. Reilly. On the ground that that was an admission against interest?

The Court. Yes.

Mr. Reilly. Now what attempt has he made to do
it?
30

The Court. I don't know. I haven't heard his answer.

Mr. Reilly. He says he read a statement. Now if you can show that what was contained in that statement

was an admission against interest the evidence may be admissible.

The Court. If Mr. Haines made use of a statement or other means or method which he embodied in a verbal declaration as to the financial condition of the company, I am permitting him to state his recollection as to what Haines said, whether what he said was the result of his reading a paper or otherwise.

10

Mr. Reilly. Then, if your Honor please, the question should be confined to just what you say; did he make any admissions in that written statement which he read as to the financial condition of that concern?

The Court. Well, I will accept your proposition upon that.

Mr. Sexton. I will withdraw the question then.

20

The Court. Yes.

Q. Mr. Blatchley, at the time that the statement was made by Mr. Haines, confining ourselves or directing your attention to the time that Mr. Haines was presiding as presiding officer at the meeting of creditors which you attended—

Mr. Reilly. Let him give us the approximate date.

30

Mr. Sexton. He has already fixed the date.

The Court. The 18th day of November.

Q. At that time was anything said by Mr. Haines as to the financial condition of this company?

A. Yes.

(Objected to.)

The Court. On the ground that it is leading?

10 Mr. Reilly. That is one ground.

The Court. What is the other?

Mr. Reilly. It is illegal.

The Court. Why?

Mr. Reilly. Because it is something that occurred subsequent to the charge in the indictment, and immaterial in this case.

20

Mr. Sexton. An admission usually is subsequent to the time of the occurrence. It would not be an admission if that were not so.

The Court. I am going to permit him to answer the question.

30 (Objection noted for defendant as ground of appeal.)

Q. What is your answer?

(Question repeated.)

A. Yes, sir.

Q. What was it?

A. He said that they had become somewhat embarrassed, and the proposition was made to the stockholders to help them out of their embarrassment by subscribing I think it was one-half of the amount of stock that they held, in addition to helping them out of their trouble. And they presented each stockholder with a card, made out, partly filled out, and for each stockholder to answer the amount that he would subscribe in addition to his stock that he held, to pay debts that were due and must be paid. 10

Q. Was anything said as to what the debts were?

A. I think—

The Court. That is, you mean by the defendant?

Mr. Sexton. By Mr. Haines.

A. I think that he stated the amount of indebtedness but I don't remember the figures. He said that if the stockholders would subscribe this amount that they asked for, which I won't say positive, but I think it was one-half the amount of their holdings, if they would subscribe this amount that that would tide them over this, and he thought then that they would come out all right. 20

Q. Was anything said as to the assets that they had at that time, by Mr. Haines?

A. I don't remember. It was quite a lengthy report and I couldn't remember.

Q. Do you recall whether there was anything said as to how long those debts were due? 30

A. How long past?

Q. How long the debts had been due.

A. I don't think there was anything in his statement as to how long they had been due, but it was bills

that were past due and must be paid, because they were threatening, his creditors were threatening and crowding him and he would have to go into the hands of a receiver unless we could raise the money to pay these debts that were due and past due.

Q. Were there any attorneys present at that time?

A. Yes, sir; there were several there.

Q. Do you know?

A. There were several; yes, sir.

10 Q. How many of the stockholders, if you know, were present?

A. How many were there present?

Q. Yes.

A. I couldn't tell the number, but there were several hundred there. It is my impression that there were three or four hundred at least.

Q. What ultimately became of the company, if you know?

A. They went into the hands of a receiver.

20 Q. How long after this meeting that you refer to as of November 18th?

A. I couldn't say, but not many days later; for I know it couldn't have been many days later because I was in Camden again and it had gone into the hands of a receiver and I talked with the receiver.

Q. And who was the receiver?

A. I have forgotten the name of the receiver.

Q. Was Mr. Haines present at the time you talked with him?

30 A. No, sir.

Re-cross Examination.

By Mr. Reilly.

Q. Mr. Blatchley, how were these statements made by Mr. Haines which you have testified?

A. Why, he had a written statement that he read.

Q. And you paid rapt attention to his reading?

A. I did, as close attention as I could; yes, sir.

Q. And you remember distinctly that he read what you have testified to?

A. I do; yes, sir.

Q. Your memory is not the least faulty in that respect?

A. Well, I couldn't say as to that.

Q. But having sworn to it you are sure that he said 10 all that you say he did?

A. I think I am positive; yes, sir.

Q. And that was on the 18th of November, 1914?

A. Yes, sir.

Q. Did you know any of the attorneys who were there whom you mentioned as having been there?

A. No, sir; I had never seen them before.

Q. Were you introduced to any?

A. No, sir; only at the—

Q. Did you try to secure the names of any of 20 them?

A. No, sir.

Q. Did the attorneys have anything to say?

A. They did.

Q. Now tell us what any attorney said.

A. They said that they objected to Mr. Haines' report.

Q. Anything else?

A. Oh, yes, they said a good many things.

Q. How many attorneys spoke at that meeting? 30

A. I am not sure how many. There were one or two certainly that spoke.

Q. You wouldn't say there were three or four?

A. I wouldn't say.

Q. And did they all say the same thing, "I object to Mr. Haines' report?"

A. Oh, no.

Q. Well, is that all you can remember that any attorney said there?

A. Oh, no.

Q. Well, what else?

A. They said that they were dissatisfied with the way that the thing was running there and that they had
10 had an expert accountant to go over the books of Mr. Haines, of the Linwood Haines Company Limited, and they found that the company was badly involved in debt.

Q. And that was the burden of the song of each attorney who spoke; is that right now?

Mr. Sexton. You didn't let him finish his answer there. I object to the interruption. He asked him what those attorneys said and the witness was about answering when Mr. Reilly interrupted. I think he ought to be
20 allowed to finish.

Mr. Reilly. I thought he had finished.

The Court. I thought he had finished too. He said very badly in debt.

By Mr. Sexton.

Q. Had you finished?
30

A. I said that they were badly in debt.

By Mr. Reilly.

Q. Who said?

A. And that they—

Q. Who said?

A. This attorney.

Q. All right.

A. It was an attorney that was brought there by some of the dissatisfied stockholders, some of the old dissatisfied stockholders.

Q. How do you know that? How do you know that fact?

A. Oh, I think that he stated it himself, that the stockholders had become dissatisfied and that they requested to have the books examined and that they had an expert accountant examine the books and found that they were involved and that unless those accounts, those bills, were paid right away that it would go into the hands—have to go into the hands of a receiver. 10

Q. Did that attorney state by whom he was employed?

A. If I remember right there was one attorney there that—

Q. That attorney that you just spoke about? 20

A. Yes, I think it was said that he had been employed by the stockholders.

Q. But you are not sure about it?

A. Not positive, no. But there was one attorney that represented the creditors.

Q. Were you represented by any attorney?

A. No, sir.

Q. What did you go there for?

A. I was summoned to go there.

Q. By whom? 30

A. By the Linwood Haines Company Limited.

Q. And have you got the letter which summoned you?

A. I don't think I have it with me.

Q. Have you got it in your possession?

A. I don't know whether it has been preserved.

Q. Will you look for it and bring it back here tomorrow?

A. I will look and see if I can find it.

Q. Now going back, will you deny that the secretary of the Linwood Haines Company Limited shortly after the 27th of October, 1914, sent to you an acknowledgment of the receipt of the check of the 27th of October, 1914, of that check?

10 A. No, sir; I won't deny it. I have no recollection of it.

Q. If you have it it is at your home, isn't it?

A. Yes, sir.

Q. Didn't you on your direct examination, or rather, upon the cross-examination of Mr. Peacock, deny that you had received it?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

20 Q. And now the best that you will give us is this, that you don't recollect having received it?

A. I do not, yes.

Q. Were you stating that as to your recollection at this moment or dating back?

A. I don't understand your question.

Q. I will change it for you, so that you may. If you did receive that it is at your home, isn't it?

A. If I received it is it probably lost.

Q. You didn't keep it then safely?

30 A. I intended to keep it—

Q. Not so safely as you kept the check and the receipt?

A. But I sometimes lose papers that I don't want to lose.

Q. How?

A. Well, they get mislaid.

Q. How? They get mislaid?

A. Yes.

Q. Any other way?

A. Well, I don't know.

Q. Will you make a search for that acknowledgment tonight?

A. Yes.

Q. And if you can find it will you bring it back here tomorrow? 10

A. Yes.

Q. Now your memory is very distinct and very clear as to all that you have just testified to under the kindly ministrations of Mr. Sexton; that is right, isn't it?

A. I guess so.

Q. And yet you don't remember whether you handed your hundred dollars to Mr. Haines or handed it to Mr. Richardson?

A. No, sir; I don't remember which I handed the 20 check to. I did the business with Mr. Haines.

Q. How do you account for your lapse of memory in that important particular? Can you account for it?

A. No, sir; I don't try to.

Q. Why don't you try to?

A. Why, it is no use.

Q. Why? Now are you depending upon your memory solely as to what you have just testified to?

A. Principally; yes, sir; but not in regard to dates.

Q. You are not testifying to the facts because you 30 are anxious to make out a case against Mr. Haines? Do you understand that question?

A. How is that?

(Question repeated.)

A. In a sense I am and in a sense I am not.

Q. Well, in which way are you?

A. I am testifying to it because it is the truth as near as I can remember.

Q. Then in what sense are you not testifying to it?

A. In what sense am I not testifying to what?

Q. You say in one sense you are and in one you are not.

10

By the Court.

Q. Are you trying to make out a case against Mr. Haines?

By Mr. Reilly.

Q. Now I ask you why you are not.

A. Yes, I desire to make out a case against him.

20

Q. And that is why you are testifying?

A. No, sir.

Q. Well, now, which will we have, yes or no?

A. I testify because it is the truth.

Q. And you are giving your testimony without the least prejudice against Mr. Haines, are you?

A. Yes, I am giving the facts just as they are as near as I can remember.

Q. You are not actuated by any motive other than one of truth?

30

A. No, sir.

Q. Did you have any meeting with any other stockholders other than at Camden?

A. Nothing—no, not—I don't remember whether you would call it stockholders or not, but we had a meeting of people that brought stock here, we met together.

Q. Where?

A. At my house.

Q. Who were they?

A. Well, there is Mr. Frank Jones, Howard Jones, John Drum, Charles Craig, Charles Applegate, and I can't readily name all of them, but there are some fourteen or fifteen people that were in the same boat I was.

Q. Well, your memory serves you better now than it did a few minutes ago, but you don't know how many there were around here? 10

A. Well, I don't know how many.

Q. But you have enumerated this number?

A. Certainly.

Q. And your memory serves you better, doesn't it? Now what was the object of that meeting?

A. That meeting? We were talking over—the object of the meeting was to talk over this matter. We considered that we had been swindled and we thought that we ought to have redress.

Q. Of what kind? 20

A. We thought we ought to have our money back and if we couldn't have it we thought that the man that got it ought to be punished.

Q. Now having thought that you ought to get your money back did you take any steps to get it back?

A. Yes, sir.

Q. And what were they?

A. We went to the Prosecutor and stated the case to him.

Q. What else? 30

A. I don't know as anything else.

Q. Did you make any demand?

A. I asked him if he couldn't be punished for it.

Q. And in what way?

A. The way that the law would prescribe.

Q. And if you had got your money back you wouldn't have gone to the Prosecutor, would you?

A. No, sir.

Q. In short, you are turning the machinery of the law in a collection agency, aren't you?

A. No, sir.

Q. What else are you doing?

A. If I had had my money back there would have been nothing to have had him punished for.

10 Q. Then you wanted the Prosecutor and his office and this court to become a commercial agency, a collection agency, in your interest; isn't that so?

A. No, sir.

Q. Well, I think it is for the jury to find out what you did want.

JAMES MERCER DAVIS, sworn for the State.

20

Direct Examination by Mr. Geran.

Q. Mr. Davis, were you present at a meeting of the stockholders of the Linwood Haines Company in Camden on November 18th?

A. I was present at a meeting, the date I don't remember, but that is very close to it; approximately anyhow.

30 Q. Were there other attorneys present besides you?

A. Yes.

Q. Who?

A. Mr. Carroll, from the office of Wilson & Carr, and my brother J. Warren Davis. Whether there were others there I don't remember.

Q. Were there stockholders or men who said they were stockholders of this company present?

A. Yes, quite a number of them.

Q. Was Mr. Haines present?

A. Yes.

Q. Will you please tell us what happened at that meeting, as far as you can recall?

A. Well, the meeting had started, or rather, the discussion had begun when I arrived; and if I remember correctly, at the time that I arrived Mr. Haines was reading a statement. I think he said the statement had been prepared by a Mr. G. Horace Roberts, who was at that time the bookkeeper of the concern. Now I think also he held some other office. That answers your question, doesn't it. 10

Q. Yes. Did you ever have a copy of that statement?

A. I think we did have a copy of that statement, or I saw a copy of it, but I don't have it now. I don't think that we kept it at all. 20

Q. Was there more than one statement, read at that meeting?

A. There was only one statement read by Mr. Haines. There was another statement that had been prepared at my request by John Hines & Company, who were public accountants of the City of Philadelphia. Now that statement also was not exactly read—I mean in to to, that is, in full—but I think parts of it were read and statements of the contents of it were made at that time. 30

Q. Did anyone make a statement besides the prepared statement of Mr. Hines and that prepared statement which was read by Mr. Haines?

A. There were the only statements that were made except some discussion by stockholders. There was dis-

cussion by stockholders there. I remember a number of persons who made statements and discussions, but I think no financial statements made by anybody except those two statements that I have just referred to.

Q. Now will you give us as far as possible your recollection of the statement made by Mr. Haines?

A. Practically the only matter that I can tell you that Mr. Haines said—and they are all broad generalities—he made a statement of the assets of the company at that time. He also made a statement of their liabilities at that time. He also made a statement of the plan to rehabilitate the company. Now that plan was in general, I think, the assessment—or no, I am wrong. The plan at that time which he proposed was a plan for each stockholder to obligate himself to buy a certain amount of goods within a certain time. I don't remember how much goods that was nor the length of time. I think that the statement required, or rather his plan required that these goods should be paid for in advance. Now that
10
20 is substantially the general outline of what was said at that time.

Q. Did he say how much advance payment would have to be made or goods bought in this manner in order to tide the company over?

A. He made the statement, but what that statement was I don't remember.

Q. Do you remember from his statement what were the assets or the liabilities of the company?

A. No, I can't tell you. I know this: that he
30 stated what approximately was the liabilities of the company for merchandise account. If I remember correctly it was in the neighborhood of \$24,000. I remember that because it was afterwards verified to be substantially the truth. He stated also, I think, that there was \$6,000, or approximately, for unpaid stock subscriptions that was

due the company. He made a statement of the amount of goods that were then on hand, also the value of the goodwill, the value of the stock and fixtures. I remember approximately what that was worth; that is, he stated it was worth; that is, the fixtures, and horses and wagons. It was in the neighborhood of \$10,000. He made also a statement that there was printed matter on hand of several thousand dollars value,—I don't remember how much that that was,—that there were cuts, dies, I guess you call them, also on hand to the value, I think¹⁰ he said \$10,000. That is my best recollection.

Q. That is, \$10,000 for all those things?

A. No, \$10,000 for the cuts and \$10,000 for the fixtures and horses and wagons. I mentioned, I think, the printed material and so on.

Q. Yes.

The Court. \$6,000.

A. Yes, several thousand dollars. I don't remem-²⁰ber exactly how much he said it was worth, but I remember very well that the dies were worth \$10,000; and there was one other item and that was a list of mailing names, rather, a mailing list. I think there was something like 50,000 or 60,000 names on this mailing list, which he valued at a certain sum. I don't recall what that was.

Q. Do you remember how much that was?

A. It ran up into the thousands. I don't know how much. I can't recall now.

Q. Do you know how much he had the goodwill³⁰ in?

A. I think the goodwill was figured in in this case over \$700,000.

Q. \$700,000?

A. Yes, I remember that for this reason: that he

had figured in the total amount of stock subscriptions paid in and the money that had been expended in advertising and the goodwill of the concern. I remember that distinctly, because that was a question that was debated and discussed there between the attorneys and between the members of the stockholders who were there, as to whether that was a proper item or not. Mr. Haines argued that it was a proper item, that all of the mailing houses, that all of the mailing house concerns regarded
10 money which had been spent by way of advertising as a part of its goodwill; that that of necessity, by nature of the business, became a part of its goodwill.

Q. Was there anything said about how much stock had been issued and outstanding?

A. Yes, I think a statement was made. I think in the statement that Mr. Haines read, and I know very well in the statement which I had prepared, that there was a statement of the amount of stock issued and outstanding.

Q. Do you know how much that was?

20 A. I can tell you, I think (Refers to statement.)

A. Yes, sir.

Mr. Peacock. I object to this statement unless it was made by Mr. Davis.

By the Court.

Q. What is the paper you have in your hand, Mr. Davis?

30 A. If your Honor please, this is a statement of the condition of the Linwood Haines Company Limited, of Camden, New Jersey, made under date of November 13, 1914, and was the statement which I had in my hands.

Q. Made by whom?

A. This statement is made and prepared by John Hines and Company.

Q. Was that the statement which you had on the day of the meeting?

A. This is the statement that I used in the statements which were made by me on that day.

Q. And is that the statement to which you referred in your previous testimony?

A. It is the statement to which I referred so far as concerning myself. It is not the statement to which I 10 referred as being made by Mr. Haines. That is a separate statement.

Mr. Reilly. And he is only asked as to particular items.

Q. Are you able to give us the figure to which you have just referred without reference to that paper?

A. I am not, sir.

Q. You may for the purpose of refreshing your 20 memory refer to the paper.

Mr. Reilly. If your Honor please, I object.

The Court. Why?

Mr. Reilly. For this reason. It is not a paper prepared by him. It is not a paper prepared by Linwood Haines.

30

The Court. You overlook the fact that it was a paper which was at the meeting in question and to which he referred as having been read.

Mr. Reilly. I didn't overlook it at all.

The Court. There were two papers, one by Mr. Haines and the other by these accountants.

Mr. Reilly. I do not overlook it at all, sir. The books would be the best evidence as to the situation at the time.

The Court. The jury will not be misled by this witness' reference—
10

Mr. Reilly. If your Honor please, pardon me if I say that that is an unmerited remark at this stage of the game. I am not undertaking to mislead the jury.

The Court. I did not say that. You had better wake up. I said the jury will not be misled into the belief that this statement is going in at all. I shall charge them as to the respect in which it is being used by the witness.
20

Mr. Reilly. But we object to the witness using it at all unless it is his own paper, unless the entries are made by him. Mr. Blatchley might have a statement of the account which might be utterly false. Mr. Davis don't know whether it is true or false. He has no means of knowing. Somebody made at that time that statement and handed it, he says, to him, or gave him a glimpse of it. He doesn't know whether that is the statement that he saw or not.
30

(Testimony repeated.)

By Mr. Geran.

Q. You stated—

A. I stated that the goodwill was estimated at over \$700,000.

By the Court.

Q. Now you were asked by the Prosecutor how much the outstanding stock subscriptions were.

The Court. Now he says that he cannot tell what they stated down there at that meeting without referring 10 to the paper which was there. I have asked the witness whether that is the paper to which he referred.

Mr. Reilly. He didn't know that that was the paper that was there.

Mr. Geran. He has said so.

Mr. Reilly. He has not.

The Court. Ask him.

20

By Mr. Geran.

Q. Is that the paper that you had with you at that meeting?

A. I am not sure whether it is the identical paper or not, but it is either the identical paper or a duplicate. There were three copies handed to me, one of which I kept and one I handed to my attorney, Mr. Carroll, or 30 didn't take with me up there.

By the Court.

Q. You are sure that is the paper?

A. Either the original or a duplicate.

Q. And you say you cannot state the value of the outstanding stock without reference to that paper?

A. No, sir; I cannot.

The Court. I am going to permit it.

Mr. Reilly Will you permit me to ask him a few questions?

10

The Court. Yes.

By Mr. Reilly.

Q. By whom was the paper made out?

A. I can tell you in this way.

Q. Well, John Hines & Company?

A. As far as I know they were. I paid them for it.

20

Q. Who are John Hines & Company?

A. They are public accountants in the City of Philadelphia, with offices in the Land Title Building.

Q. And you have no knowledge of how they made it out?

A. Not a thing.

Q. You can't say that Mr. Haines participated in the making of it?

A. No, I cannot.

Q. Neither can you say whether it was made upon
30 the order of the Haines Company Limited or not?

A. This paper was made on my order.

Q. Your personal order?

A. My personal order.

Q. And that is one of several papers?

A. This is a duplicate.

Q. It may be a triplicate?

A. Well, it is a triplicate.

Q. Or a quadruplicate? It is one of several papers?

A. Well, as far as I know it is a triplicate, but it may be a quadruplicate.

Q. And you can't say whether or not that is the paper that you inspected, the paper you have in your hands?

A. I won't say that it is the paper that I used on this date, but it is either this or a duplicate of it. 10

Mr. Reilly. Now I submit. if your Honor please, that the testimony is very vague and very indefinite.

Q. One question more. From what was that made, if at all made?

A. You mean this paper?

Q. Yes.

A. I know in part, Mr. Reilly, in part I do not. I remember that I called Mr. Haines on the phone and asked him whether— 20

Q. From what were those excerpts taken?

A. I am going to tell you just all I know about it. I called Mr. Haines and asked him whether he would object to having—

Q. One minute.

Mr. Geran. I submit the question has not already been asked from what this information was obtained. 30

Mr. Reilly. I will withdraw the question.

Mr. Geran. It had not been asked.

Mr. Reilly. I can withdraw it.

The Court. He can withdraw the question.

Q. Does that paper purport to be a copy from the books of the Haines Company Limited?

A. I think part of it is a copy from the books and I think that a part of it is a resume of matters contained in the books.

10

By the Court.

Q. And it is an analysis of the matter taken from the books?

A. Yes, your Honor.

By Mr. Reilly.

Q. Have you any knowledge as to its correctness
20 or incorrectness?

A. I have a knowledge as to its correctness in certain items.

Q. Pardon me, yes or no?

Mr. Geran. He is answering.

A. Partly yes and partly no, Mr. Reilly.

Mr. Reilly. I think, if your Honor please, the at-
30 tempt is clearly an illegal one.

The Court. The question will be admitted.

(Objection noted for defendant as ground of appeal.)

The Court. I understand it is simply to refresh the memory of the witness as to this item.

By Mr. Geran.

Q. I believe the question was about the amount of stock issued.

A. Yes. The authorized capital stock was \$500,000 preferred.

10

Mr. Reilly. I think you were asked as to paid-up stock.

A. I am getting it in this way: that there was unissued \$351,065 of unissued preferred capital stock. The capital common stock authorized was \$1,000,000, and unissued, \$351,056. Now the difference between those would be the sums that were issued.

Mr. Reilly. Now I move that the answer be 20 stricken out.

By the Court.

Q. Were these statements read at the meeting in question, in the presence of Mr. Haines?

A. To my best recollection they were.

Mr. Reilly. But here is what we have to deal with. What was the amount of paid up capital stock? I think 30 that is the question. Now clearly the answer is not responsive.

Mr. Geran. That is not the question.

Mr. Reilly. Let us see what the question was.

The Court. The amount of outstanding stock.

Mr. Geran. Yes, not issued.

Mr. Reilly. Well, it is the same thing, outstanding, unissued. It is without a distinction.

10 The Court. Well, I don't know, if you look at the case of the Knickerbocker Machine Company vs you will find there is a great difference.

Mr. Reilly. I was applying my remarks to the question, if your Honor please. My motion is, if your Honor please, as to that answer to strike it out as irresponsible.

The Court. The motion is denied. You may have
20 an exception. He says that those figures were publicly read in the presence of Mr. Haines.

Mr. Reilly. But we are quarreling about the question of what was the amount of the outstanding stock.

The Court. You said it was not responsive.

Mr. Reilly. I move to strike it out upon the ground
30 that the answer was not responsive.

The Court. The motion is refused.

(Objection noted for defendant as ground of appeal.)

By Mr. Geran.

Q. Was there anything said at that time as to the amount of cash the company had?

A. You mean on hand?

Q. On hand.

A. I don't remember about that, Mr. Geran.

Q. Was there anything said to the effect that there would have to be money or else the adoption of some plan for the raising of money in order to enable them to continue in business? 10

A. Yes.

Mr. Reilly. I object to that as leading. I think the proper form would be what was said or what else was said.

The Court. Yes, I think it suggests the answer.

Q. You have already stated that there was a plan 20 submitted by Mr. Haines for the raising of additional money. Was there any other plan suggested among the stockholders in the presence of Mr. Haines other than the one which he had proposed himself?

A. No, I think not.

Q. How many stockholders were present?

A. I couldn't tell. There were, I should think, a hundred, perhaps more, but I think safe to say there were a hundred stockholders present or people whom I supposed to be stockholders. They were in the room where the stockholders meeting was being held and some of them I know were stockholders. 30

Q. How did you happen to be present yourself?

A. I represented some of the stockholders from South Jersey, down in Salem County, and I had heard of

the meeting and had been asked by these stockholders to be present and find out what the situation was.

Q. I understand that you had caused an examination to be made by auditors of this company?

A. Yes.

Q. When did you request that examination to be made or when was it that you requested it?

A. Well, it was some days before that, I can't tell; perhaps two weeks. I remember that there had been a
10 meeting, I think, of a limited number of the stockholders in Camden. I was not present and don't know what was said or done. The result of that meeting was, however, that I applied to Mr. Haines for permission to have accountants examine the books of the concern.

Q. Now when did you apply to Mr. Haines for that permission?

A. I can't tell you definitely. This report bears date November 13th. I should imagine—my best recollection is that it was five or six days before that time.

20

By the Court.

Q. That was prior to the creditors' meeting, wasn't it?

A. Well, it was prior to the creditors' meeting which I testified to, your Honor, because I used this paper at that meeting; but there had been, as I said, another meeting of a smaller number of stockholders some-
30 time before that, and by the way, your Honor, I think you used the words creditors' meeting. It was not a creditors' meeting, it was a stockholders' meeting.

By Mr. Geran.

Q. This was the first meeting that you had been present at?

A. Yes.

Q. You had theretofore talked to Mr. Haines, some five or six days before November 13th?

A. That is right.

Q. Had you talked with Mr. Haines concerning this matter previous to that?

A. No.

Q. On November 13th at the time you talked to him, five or six days prior to November 13th, did you tell him what you wanted? ¹⁰

A. If I remember correctly I told Mr. Haines that some of the stockholders of his concern that had held a meeting either that day or shortly before, had come to me and asked me to look after their interest in this matter and that we desired to have an opportunity to examine the books and that I wanted his consent. I think I also talked at the same conversation or at the time with a gentleman whom I afterwards learned to be Mr. Horace ²⁰ Roberts. Each of them expressed their willingness that I should have free and open access to the books of the company. If I remember correctly—I think that I am correct about it—afterwards Mr. Haines and Mr. Roberts came to my office—my office is at Third Street, Camden, Third and Market,—and their place of business is on Front, which is nearly four squares away—I am not sure whether it was the same day or whether it was the next day, both those gentlemen came to my office and said that the books were open, that I might have an account- ³⁰ ant examine them to suit myself.

Q. They understood that you represented people who were already stockholders?

A. Yes.

Q. And not people who were prospective stockholders?

A. That is right.

Q. After November 18th do you know what happened in connection with the legal existence of this company?

A. Well, on November 19th I was appointed receiver by the United States Court for the Linwood Haines of America, and immediately took charge of the store and the two other places of business, on the same day that I was appointed.

Q. You say you were appointed receiver of the Limited Haines Company Limited of America?

A. Linwood Haines Limited of America.

Q. Do you know whether there was any other corporation of the same name or of a name in which Linwood Haines' name appeared?

A. I believe that there was a corporation by the name of Linwood Haines, of Camden. I think the word "Limited" was not in it. I am not quite sure about that. The names of the two companies were almost identical, with the exception that the second corporation had the name Camden instead of America.

Q. And the first corporation had it of America?

A. That is right.

Q. And the second of Camden?

A. That is right.

Q. And you were appointed receiver of the company a part of whose title was "America"?

A. That is correct.

Q. And it was to that company that you have been referring as to the data in reference to the stock issued and so forth?

A. Well, apparently the books at that time—in fact I know they did, because I have examined the books

that have been in my possession—the books at the time this statement was made and at the time that I was appointed receiver as a matter of fact dealt with Linwood Haines Limited, of Camden. And this account, I might say, Mr. Geran, in this statement made by the accountants, is the statement of the books and accounts of Linwood Haines Limited, of Camden, New Jersey.

Q. Do you know whether any stock was ever issued by the Linwood Haines Limited of Camden?

A. I am not sure whether any stock was ever issued by that concern or not. 10

Q. Of the Camden Company?

A. Of the Camden Company.

Q. Do you know whether any stock was ever issued by the of America company?

A. Yes.

Q. And was it the of America Company to which you referred when you say that \$1,000,000 worth of common and \$500,000 worth of preferred were authorized?

A. Apparently not. This statement is a statement 20 of the Linwood Haines Limited of Camden, and the statement with respect to stock and the financial condition which I have before me, which I used at the time, that you refer to, was of the Linwood Haines Limited of Camden, not Linwood Haines Limited of America.

Q. Then there must have been stock issued by the Camden Company?

A. Well, there may or may not have been. I am not able to testify about that. You see I am not the receiver of the Linwood Haines Limited of Camden. I 30 know of the existence of that concern purely by reason of some papers that came into my hands when I took charge of the assets of the Linwood Haines Limited of America. There were, if I remember correctly, some books and

some seals and other matters, indicating that there was such a corporation.

Q. That is, of Camden?

A. Of Camden; but as to the condition of that concern I know nothing at all except what I have indicated here.

Q. Did you ever see any stock scrip of the company of America?

A. My best recollection is that I have.

10 Q. Did you ever see any stock scrip of the company of Camden?

A. Yes. I beg your pardon, I think that I am wrong there. I would like to correct my answer.

Mr. Reilly. I would like to ask the court what is meant by stock scrip.

The Court. You ask the gentlemen that is using the term and then I will rule on it whether he is correct
20 or not.

Mr. Geran. Well, the witness apparently knows what it means.

A. I understood—

The Court. It is apparently a confidential communication. We will let it go at that.

30 A. I wish to correct my statement in this respect: that so far as the Linwood Haines Company of America is concerned, I have seen numerous shares of the stock of that corporation. My recollection is I have seen stock certificates of the Linwood Haines Company of

Camden. Now I am not sure about that, but that is my recollection.

Q. Do you know whether you have ever seen any of the Camden stock which had been issued?

A. My recollection is that I saw some in the safe which I took charge of that had not been sent out but had been signed and ready to be delivered. That is my recollection. I may be wrong about it, but that is my recollection about that.

Q. As receiver of the Haines Company Limited¹⁰ of America did you receive assets?

A. Yes.

Q. As receiver?

A. Yes.

Q. Are you still receiver for that corporation?

A. Trustee.

Q. You are now trustee?

A. Yes.

Q. Are you now settling up the affair of that company?²⁰

A. Yes.

Q. Did you ever receive any assets of the Haines Company of Camden?

A. No.

Q. Do you know whether there are any assets of the Haines Company of Camden?

A. I do not.

Q. At the time of the discussion of November 18th was anything said about whether there was a meeting of the Haines Company of Camden or the Haines Company of America?³⁰

A. At that time?

Q. Yes.

A. I understood, and I think the fact to be, that at the time this meeting was held that they were opera-

ting then under the title of Linwood Haines Limited of Camden. I understood, I think at that meeting that this Linwood Haines of America on or about the 1st of August was purported to have transferred all of its assets to the Linwood Haines Limited of Camden. However, creditors had not been notified of that fact and when we took charge of the assets of this concern we took all of the assets that we found and have proceeded to administer them as the assets of the Linwood Haines
10 Limited of America.

Q. But that has nothing to do with the Linwood Haines of Camden?

A. Not at all. As far as I know that is an existing corporation.

By the Court.

Q. Do you recall at the meeting to which you refer of stockholders what statement was made as to the total
20 amount of liabilities or total amount of assets?

A. I remember substantially this, your Honor, and I think that I am fairly accurate about it; that there was a merchandise account of about \$24,000 that was outstanding, that was owing; that there were bills receivable and overdrafts amounting to about \$2,000; there was also, if I remember correctly, some loans made by Mr. Haines' father, which I afterwards ascertained to be correct, to the corporation, amounting to some, if I remember correctly, \$3,000. There were also some small
30 sums which were then owing for salary to some of its officers, I think chiefly to Mr. Haines' father.

Q. Did the liabilities exceed the assets on this statement at the meeting?

A. In this statement they did not, sir. I mean the assets exceed the liabilities. They did not exceed the

liabilities from the statement made.

Q. The subsequent result was what, on final administration?

A. Well, at the present time, or rather, at the time that the inventory and appraisement was made, your Honor, the amount of goods that were actually inventoried by the appraisers was less than the outstanding obligations of the concern.

Q. Who applied for the appointment of a receiver?

A. There were some creditors, I don't recall who they were. 10

Q. Under the Federal Bankruptcy Law?

A. Under the Federal Bankruptcy Law and I think his Honor Judge Rellstab made the order.

Q. There was an adjudication of insolvency, was there?

A. Yes, sir.

By Mr. Geran.

Q. Was there a contest on the adjudication? 20

A. I think no contest, if I remember correctly, and I think I am positive about that.

By the Court.

Q. What was the date of the adjudication, do you remember, or rather, your appointment?

A. I was appointed receiver on November 19th.

Q. And there was an adjudication at that time, was there, of bankruptcy? 30

A. Not immediately, your Honor. You see this was a corporation and it was some little time—I was some little time, several days—I think the rule requires five days' service before adjudication, and I am sure that

it was at least five days after service before a adjudication of bankruptcy was made; and I think, although I am not certain about this, that I qualified as trustee on the 21st of the following January. It was in January, anyhow. My counsel advises me that it was on the 21st.

By Mr. Geran.

10 Q. Who was the counsel in that?

A. Wilson & Carr.

Q. Did any member of their firm have charge of it?

A. Mr. Carroll has charge of it and has been in charge ever since the application was made for receivership.

By the Court.

Q. To your knowledge of the affairs of this concern, the information which you had at the meeting of stockholders on the 18th of November, or the meeting to which you refer, what would you say was the condition of this company on the 27th day of October, 1914?

A. Well, your Honor, I have no information except what the books revealed as to what transpired between the 27th of October and the 19th of November. The statement which was made on the 18th of November, both by Mr. Haines and apparently the statement made by John Hines & Company, represented the concern to
30 have assets then exceeding its liabilities. But at that time, and also as obtained when I was appointed receiver, and later when the inventory and appraisement was made, that took into consideration the assets which do not have, so far as a liquidating concern is concerned, any market value, but as a going concern did have a spe-

cific value. So that the inventory that was made by the appraisers at the time that I was appointed receiver in the matter did not put any money value at all upon—as I remember it—and I think I am correct about it—any money value at all upon the cuts, which I am advised and believe cost the concern \$10,000, or approximately. The inventory and appraisalment put the fixtures of the concern at a very nominal sum, and the mailing list was not considered at all.

Q. Has any dividend been paid to the creditors? 10

A. Yes, your Honor, I think twenty per cent has been paid and another dividend is about to be declared and we have considerable money on hand.

By Mr. Geran.

Q. Can you approximate what your total remaining dividends will amount to?

A. That depends upon some litigation, Mr. Geran. We have, if I remember correctly, on hand at the present 20 time something like between \$7,000 and \$8,000. There are a number of outstanding stock subscriptions that have not been paid, and liability on bonus stock which has never been paid. So far as the creditors are concerned I think the creditors are safe.

Q. Can you tell us the character of the liabilities of the company?

The Court. Hasn't he told us that, Mr. Geran?

30

Mr. Geran. No, sir; I don't think that he has.

The Court. \$24,000 of merchandise?

The Witness. Yes, I think it will exceed that, your Honor, a little bit now.

Q. I understand there was \$24,000 owing on merchandise?

A. At that time, but I think as a matter of fact when all the bills come in that the liabilities have increased. In other words, some bills at that time had not matured and did not appear as bills payable at that time.

10 Q. Do you know when the father had put up his \$3,000?

A. Of course the books would show exactly, but my recollection is that something like \$1,000 of this was advanced by the father during the summer preceding my appointment as receiver. Now just when the other sums were advanced I do not recall.

Q. Do you know how recently the father had advanced any?

A. It was late, if I remember correctly, it was late
20 in the preceding summer before I was appointed trustee or receiver.

Q. I understood you to say it was \$1,000.

A. I say that \$1,000. Now the other sums I have no recollection whatsoever.

Q. Do you know the approximate dates of the overdrafts?

A. I think that was almost coincident with my appointment as receiver.

Q. Can you tell us about how long standing the
30 \$24,000 was for merchandise that was due?

A. Yes, I think I can give you a very general idea, which is fairly approximate. I do not think that any of the accounts had been running over ninety days.

Q. How many stores did the Linwood Haines Company Limited have?

A. Had three.

Q. Where were they?

A. One was near the corner of Federal and Front Street; I don't remember—

Q. I mean cities.

A. Camden, all three of them in Camden.

Q. All three in Camden?

A. Yes, sir.

Q. No store at Flemington, New Jersey?

A. I know of none.

10

Q. Do you know who was the manager or had charge of the business.

A. At Camden?

Q. Well, yes, of the general business.

A. Well there were several, Mr. Geran. There was Linwood Haines, who of course was president, there was Mr. G. Horace Roberts, who was, I think, a director. I am not sure of that, I think he was; and he was bookkeeper; and then there was Mr. Douglass, who was in the office, or rather in the store, and had charge of one department. There was a Mr. Haines, not related, as far as I know, to Linwood Haines, who had charge, if I remember correctly of the grocery department, 118 Federal Street; another gentleman whose name at present escapes me. I think that he and Mr. Douglass also had charge of the farming implement department.

20

Q. And who had general charge and supervision over the business?

A. Well, that would be purely guesswork on my part. I had nothing to do with the corporation, practically, until I was appointed receiver.

30

By the Court.

Q. Who was the president?

A. Mr. Haines was president.

By Mr. Geran.

Q. After you had been appointed receiver did you consult with any one who had formerly been connected with the company for the purpose of gaining information and so forth?

A. Yes.

10 Q. With whom did you consult?

A. I consulted freely with Mr. Roberts and with Mr. Douglass and to some extent with Mr. Haines. In fact, Mr. Douglass and another gentlemen whose name I cannot recall for the moment, were retained in my employment as receiver for some little time after the receivership for the purpose of inventorying and appraising the stock; and that also applied to Mr. Haines, of the grocery department, not the Mr. Haines here.

Q. You have told us at the meeting on November
20 18th that Mr. Haines presented a plan for working out of the financial difficulties of the company. Will you also tell us to the best of your recollection what Mr. Haines said concerning the general financial condition of the company?

A. My recollection is that he said the company was short of funds; that owing to the depression resulting from the war in Europe that he had been unable to ship his stock as rapidly as he ought to, and that ready cash was needed; that some of the creditors were pressing
30 the concern for immediate payment; that it was utterly impossible to realize in the ordinary course of business sufficient funds to meet the immediate present obligations; that he outlined, I think, more than one plan. I recall only one plan; I cannot recall, that is, the details of but one plan. That was, as I said to you before, that

each shareholder would obligate himself to buy a certain amount of goods, and my recollection is that they were to pay for them in advance and take the goods within a certain specified time.

Cross Examination.

By Mr. Peacock.

Q. Do you know the date of this meeting, Mr. 10
Davis, which you attended of the stockholders?

A. Only approximately. It was sometime within
two or three days before the 19th.

Q. You say November 18th. Is it the same meet-
ing referred to by Mr. Blatchley when he was on the
stand, of the stockholders?

A. Well, apparently he is referring to the same
meeting that I am, but I cannot be sure as to the date.

Q. How many people were present there, would
you say, stockholders? 20

A. Well, there were some hundred. There were
more people there than there are in the courtroom.

Q. Would you say there were four hundred there?

A. I wouldn't think that.

Q. Three hundred there?

A. I should think that was high.

Q. You say a certain statement was read by Mr.
Haines which had been prepared by Mr. Roberts?

A. Yes.

Q. And that statement was on the question of the 30
rehabilitation of the company, wasn't it?

A. Yes; he stated in the first place the condition of
the company as it then was, and told the needs and then
suggested his plan.

Q. And what were the assets of the company at that time?

A. . I cannot be definite.

Q. Well, approximately, Mr. Davis.

A. I think that the stock on hand, that is, I mean the goods on hand, at that time were fixed at something about \$35,000, if I remember correctly.

Q. \$35,000?

10 A. Yes, the fixtures, that is, the desks and things of that sort, together with the horses and wagons, were fixed at something like \$10,000.

Q. How about the unpaid stock subscribed?

A. That, if I remember correctly, was between \$6,000 and \$7,000, and that is correct too.

Q. Now bills receivable?

A. I am not sure. I would be afraid to give any figures on that.

Q. Can't you give it approximately?

20 A. Well, it would be purely a guess and I wouldn't want to do it.

Q. Cuts and proofs and dies and so forth?

A. They were estimated to be worth more than \$10,000.

Q. Catalogues and printed matter which were used in the going concern, the mail order business?

A. My recollection is that they were estimated to be worth \$10,000.

Q. Do you remember how many they had on hand at that time?

30 A. No, I do not. I know that when I was appointed receiver there was a considerable number.

Q. There was the mailing list also, wasn't there, Mr. Davis?

A. Yes.

Q. And isn't that of value to a mail order concern

such as Linwood Haines, such as you have described?

A. Well, I have no experience in the mail order business, except my very limited experience with this concern.

Q. But it was so stated that day, wasn't it?

A. At that time this mail order list was said to be worth, to have cost the Linwood Haines Limited \$10,000 and it was averred it was worth that much.

Q. Do you know how many names that mailing list contained? 10

A. I think the estimate was made—at any rate what was said at that time—I think it was said between 40,000 and 60,000.

Q. And the goodwill of the business was worth something, wasn't it?

A. It was estimated at that time and stated by Mr. Haines to consist of the amount of money that had been expended in advertising. I think that the goodwill of the concern at that time was estimated to be worth \$700,000 and something more, and it was arrived at by estimating 20 the amount of money that had been spent in advertising the concern.

Q. And that was given by Mr. Haines, or rather, pointed out to show the difference between the physical assets and the total amount of outstanding stock as shown by the accountants' sheets, wasn't it, or by the accountants' report?

A. I don't get you.

Q. Isn't that what Mr. Haines said that was? 30

(Question repeated.)

A. I don't understand that at all. It was pointed out by him at that time as being the way of estimating the goodwill of the concern, by showing how much it had

cost the concern to obtain that goodwill.

Q. Well, wasn't that \$100,000 instead of \$700,000? Isn't that what Mr. Haines said? Aren't you mistaken on that point?

A. I don't think so. I think that I am correct in that.

Q. I don't mean what the accountants said. I don't mean in regard to accountants, I mean what Mr. Haines estimated the goodwill to be.

10 A. I understand what you mean and I understand what my recollection is, that the goodwill which was stated by Mr. Haines on the 18th day, if that was the day, was the same amount of goodwill that was given in the account of the accountants; and the accountants figured this goodwill \$731,295.59.

Q. You testified that the authorized stock was \$500,000, is that right?

A. I think so. That is the capital stock, I mean unissued, \$351,065. I found here just a minute ago just
20 how much capital stock had been issued, apparently, and paid for.

Mr. Reilly. Of course, your Honor, we don't want to be interrupting continually; you understand that we object to the witness testifying to anything that he is reading from that paper.

The Court. I will permit the witness to refer to that paper for the purpose of refreshing his memory
30 only.

Mr. Reilly. We will take a general exception to it.

(Objection noted for defendant as ground of appeal.)

A. I was going to say, Mr. Peacock, to be definite, that there was capital stock preferred issued, \$148,935.

Q. And that \$148,000 was actual physical assets, wasn't it? \$148,000 was described as actual physical assets, wasn't it?

A. No, I don't think so, except as I have indicated in my testimony before. The goods on hand, if I remember correctly, were inventoried or appraised by him at \$35,000, and then these several items which I have already mentioned. Now how much they were I have not attempted to figure out. 10

Q. Do you know what that data from which you refresh your memory was made from?

A. No, I was not present.

Q. Do you know that to be a true audit of the account?

A. No, it has been substantially true with respect to the obligations of the company.

Q. Where are the books, Mr. Davis, of this concern? 20

A. Of the Linwood Haines Limited of America?

Q. Yes.

A. They are in the hands of my counsel.

Q. Are they in court?

A. No.

Q. Mr. Haines consented to have you make an examination of the books and said they were open to all stockholders, didn't he?

A. Yes.

Q. Told you that any stockholder could go there 30 or their attorney could go there and examine those books at any time?

A. Yes.

Q. And told you that he hadn't anything to conceal

in regard to the management of this corporation, didn't he?

A. That is right.

Q. He told you that his father had loaned the concern \$1,000 just a few days before this meeting in which you were appointed receiver?

A. I think that that statement was made by Mr. Haines at the meeting of the stockholders in the Y. M. C. A. building. I don't think he told me that privately.

10 Q. You know that to be a fact, don't you?

A. The books so disclosed and claims have been filed and allowed by the referee in that particular.

Q. Now on that date what were the liabilities, do you know, Mr. Davis, on the date of the stockholders' meeting?

A. No, I do not, except as indicated here by the 13th, on the 13th of November.

Q. Now do you know what the liabilities of this concern were on October 27th, Mr. Davis?

20 A. I do not.

Q. Now on the date of the stockholders' meeting, from information which you received in regard to the merchandise on hand and the fixtures and the unpaid stock, bills receivable, the value of the cuts, proofs and dies and the mail order mailing list, deducting the liabilities on October 27th, wouldn't you say that Linwood Haines was a solvent corporation?

A. Well, Mr. Peacock, I have not attempted to figure it out as I have given it to you here, but from my
30 knowledge of the debts that have been proven against the corporation—and I might say that I have had the dividend sheet as prepared by the referee—I suppose that it is probably correct that taking the value or giving any value to the dies and cuts and to the list of names and to the printed material, which certainly costs money—

Q. And that was material to a growing concern, wasn't it?

A. The corporation would have been solvent.

Q. On October 26th?

A. Well, I suppose the same condition obtained on October 26th as obtained when I took charge of it. That I have no information about.

By Mr. Reilly.

10

Q. On November 19th you took charge?

A. On November 19th I took charge.

By Mr. Peacock.

Q. And with the appraisement as given by you here, the appraisement was made very low, was it, for the purpose of liquidating the concern?

A. Well, I of course had knowledge of the way in which the appraisement was reached. Mr. Carroll, who 20 was my attorney, was one of the appraisers. Mr. Douglass and Mr. Haines and this other gentleman whose name I cannot recall were retained by me for the purpose of making an inventory of the goods on hand. When that inventory was made the cost price was fixed from the books of the concern.

Q. The cost price?

A. The cost price. Now from that cost price a certain per cent. was deducted; some goods ten, some 30 twenty and I think some thirty. I am not sure if not some of the goods were not priced at fifty per cent. of their original price. I think that to be the fact. Now just what the sum total of the cost price was I do not recall, nor am I sure about the amount after the deductions. But the appraisement that was made by the ap-

praisers appointed by the referee in bankruptcy at that time did not contain any item of credit either for the cuts or for the printed material which is on hand or the list of names.

Q. And the appraisement you say in some places was deducted ten, twenty and as high as fifty per cent. from the actual cost price?

A. Well, I am not sure about everything fifty per cent. My recollection is that some of the articles were
10 appraised only at fifty per cent., but I am not quite positive about that, but I think that is true. Mr. Carroll I think has the original memoranda.

Q. And that appraisement was made for the purpose of effecting a quick sale, wasn't it, Mr. Davis?

A. Well, we wanted to make the appraisement at such sum that it would not look ridiculous and would be a fairly reasonable sum at which we could liquidate the concern.

Q. By some of these liabilities or debts as owed by
20 this company were thirty, sixty and ninety days, weren't they?

A. My recollection is such, yes.

Q. And that would be considered in the mail order business or any mercantile business as being cash sales, wouldn't it, discounted ninety days?

Mr. Geran. I object unless the witness can qualify as an expert.

30 A. I was going to say I have no information on that line to qualify me to express an opinion. I am not qualified to express an opinion as to the course of trade. I try to make my living practicing law.

Q. Don't you know the commercial trade rules, Mr. Davis?

A. No, I am not in that line of business.

Q. Mr. Davis, I don't know whether I omitted to ask you the question, on November 18th will you approximate the liabilities of the concern at that time?

A. I could approximate them on the 13th.

Q. Well, on the 13th.

A. And I suppose they were not very much different. At that time the report that I have shows the amount payable as \$21,934.78.

10

By Mr. Geran.

Q. That is liabilities?

A. That is accounts payable. There were wages, \$117.37.

Mr. Peacock. I will agree that the Linwood Haines of Camden was taken in as the Linwood Haines of America.

20

Mr. Geran. Before we adjourn I would like to have a statement of the liabilities.

The Witness	Wages,	\$113.37
	J. H. Haines, loan,	846.84
	J. H. Haines, salary,	25.50

By Mr. Geran.

Q. Who was that salary to?

30

A. J. H. Haines, father of the defendant.

Sundry minor creditors,\$ 89.84

That makes a sum total, 26,619.02

Cash overdraft, 2,247.99

That is all of the liabilities with the exception of the stock liabilities.

Q. What are the stock liabilities?

A. That is the amount of preferred stock and common stock issued and outstanding, approximately a million minus.

Q. \$148,000 apparently had been issued and paid for of preferred?

A. Yes.

10 Q. And none common had been paid for?

A. None at all; all issued and outstanding bonus.

Mr. Peacock. I will consent that this is a copy of the appraisalment.

(Adjourned till February 25, 1916, at 9.30 A. M.)

Freehold, N. J., February 25, 1916.

(Trial of the cause resumed at 9.30 A. M.)

10

Mr. Geran. I understood at the close of the testimony of Mr. Davis last night it was understood that the report which he produced purporting to have been made by John Hines & Company would be permitted to go in evidence, and also an appraisers' report which had been submitted by Mr. Carroll.

Mr. Peacock. We agreed to the copy of the inventory but not the account. It was made by Hines & Company and objected to as not being proven.

20

The Court. Yes, I think that is true.

Mr. Peacock. And the court merely permitted him to use it to refresh his memory?

The Court. Yes, and that the inventory might be permitted without the necessity of it being proved by Mr. Carroll.

30

(Appraisers' report offered in evidence and marked Exhibit S 3.)

MRS. OPHELIA BLATCHLEY, sworn for the State.

Direct Examination by Mr. Geran.

Q. Mrs. Blatchley, you are the wife of George W. Blatchley?

A. Yes, sir.

Q. And live with him?

A. I do.

10 Q. On the farm?

A. Yes, sir.

Q. And were residing there in October of last year?

A. Yes, sir.

Q. Do you know Linwood Haines?

A. I do.

Q. When did you meet him?

A. I met him in October, 1914.

Q. Do you remember about what time in October?

20 A. Well, the first that I ever met him was the day that I went to Camden on stockholders' day.

Q. You went with the stockholders?

A. Yes, sir.

Q. Of the company to Camden?

A. Yes, sir.

Q. And when was that?

A. Well, I won't try to tell you just the date, whether it was the 16th, the stockholders; I won't say for sure.

30 Q. How long was that before Mr. Haines afterwards came to your house?

A. I couldn't tell you that just to a day.

Q. Was it a few days a week or—

A. Oh, just a few days. I wouldn't try to tell. Mr. Blatchley has given the days but I wouldn't try to

remember it. It was the same day that he came there. That was the only time I ever saw him when he came to our place.

Q. When he came who came with him?

A. Mr. Richardson.

Q. You had met Mr. Richardson before?

A. Yes, sir.

Q. What time of day did they arrive?

A. After dinner.

Q. What did they do when they came there? 10

A. They came in the house.

Q. Who came in the house?

A. Mr. Haines and Mr. Richardson.

Q. After they came in the house what did they do?

A. They took off their caps and sat down and visited awhile. Do you want me to tell you the conversation.

Q. And sat in one of the rooms of the house?

A. Yes.

Q. Who was present at the time they were there? 20

A. Mr. Blatchley, myself, Mr. Haines and Mr. Richardson.

Q. Was any one else there?

A. No, sir.

Q. Were you there all the time they were there?

A. I was; yes, sir.

Q. In the room? Did you hear the conversation?

A. I did.

Q. Did you hear all the conversation?

A. I did. 30

Q. Will you tell us now as nearly as you can recall what was the subject matter and the details of the conversation there?

A. Well, of course I couldn't tell you all of the conversation, because I can't remember all, but I can

tell you the substance of their business. They came with the idea of giving their stockholders, to some of their selected stockholders, he claimed—

Mr. Reilly.—If your Honor please, I object to that as not responsive and move it be stricken out.

The Court. No, it is not responsive, that is true. You can state that the defendant said as far as you recall
10 it, Mrs. Blatchley.

A. Well, you mean, your Honor, just repeat the conversation?

The Court. Just as you can recall.

A. Well, he came there and said he came with the idea of letting a few of his selected stockholders have more stock. He urged them to take more stock in his
20 concern, and they was to have the stock the same as they had the other, with one share of preferred, two shares of common. And he urged Mr. Blatchley to take more stock; that they was not in the habit of letting them have but \$100, but they had made up their minds that they would open their stock to their stockholders and give them the privilege of taking more than a hundred if they would; letting them come in on the ground floor as he called it.

30 Q. Did you engage in the conversation at all?

A. Oh, a little. I asked him a few questions.

Q. You did ask him some questions?

A. Yes.

Q. And do you remember any questions that you did ask him?

A. I do.

Q. What did you ask him?

A. I asked him as to the reliability of the company and if it was a safe investment.

Q. What did he say?

A. He said it certainly was a safe investment, and he said that as I asked him about failure, if there was any danger of failure in those concerns, he said that a mail order house could not fail conducted under those rules; and he said still further that his business, handled the way they handled it, they bought for cash, they sold 10 for cash and they turned their money, therefore, if my memory serves me right, about twelve or fourteen times; and he said, "Although we make a small profit you can see that we cannot lose."

By Mr. Reilly.

Q. What is that about twelve or fourteen times?

A. That is the number of times that they turned their money in their deals; and he said therefore there 20 was no chance of failure, and he says, "You will recall that you never heard and it was never known that a mail order house ever to fail." That is what he told me that day in answer to my question.

By Mr. Geran.

Q. As a result of the conversation what did your husband do?

30

(Objected to.)

The Court. I think that is objectionable.

Q. What did your husband do there?

A. Well, he didn't do anything at the time, only just they stopped there and visited and talked and talked the matter over.

Q. Well, did your husband buy stock?

A. Yes, he did, after awhile.

Mr. Reilly. I submit, if your Honor please, she has answered.

10 Q. Did your husband give him any money or check?

A. He did.

Q. Were you there at the time?

A. I was.

Q. Do you know what your husband did give him?

A. I know that he gave him a check of \$100.

Q. To whom was the check given?

A. Mr. Haines.

Q. Was there a receipt given?

20 A. There was.

Q. Where was the receipt made out?

A. Mr. Richardson made out the receipt and handed it—

Q. Where was the receipt made out?

A. Right there in my room.

By the Court.

Q. And handed it you said?

30 A. And handed it to Mr. Haines, and Mr. Haines handed it to Mr. Blatchley.

By Mr. Geran.

Q. You are sure that the receipt was made out

NEW JERSEY, SS.

The State of New Jersey to Rulif V.
Lawrence, Esquire, Judge of the Court
of Quarter Sessions of the County of
(L. S.) Monmouth.

Because in the record and proceed-¹⁰
ings, and also the giving of judgment
upon a certain indictment against Lin-
wood Haines, late of the City of Cam-
den and County of Camden for obtaining money under
false pretenses in the County of Monmouth.

Pro ut the said indictment and the several counts
therein, whereof, before you, he hath been indicted, and
is therefore convicted by a certain Jury of the County of
Monmouth, taken between the State of New Jersey and
the said Linwood Haines, as it is said, manifest error²⁰
hath intervened to the great damage of the said Linwood
Haines, as from his complaint we have received infor-
mation, we being willing in this behalf, to correct the
error in due manner, if any there shall be, and that speedy
justice be done to him, the said Linwood Haines, com-
mand you that if judgment be thereon given, then that
you distinctly and openly send under your seal the record
and proceedings aforesaid with all things touching the
same to our Justices of the Supreme Court of the State
of New Jersey, on the sixth day of April, next, and this³⁰
Writ, that the record and proceedings aforesaid being in-
spected, we may further cause to be done thereupon for
correcting that error that of right and according to law
ought to be done.

WITNESS, William S. Gummere, Esquire, our Chief Justice at Trenton aforesaid, the seventeenth day of March, in the year of our Lord, one thousand nine hundred and sixteen.

WILLIAM C. GEBHARDT,
Clerk.

ROBERT PEACOCK,
JOSEPH REILLY,
Attorneys.

MONMOUTH COUNTY COURT OF QUARTER
SESSIONS.

LINWOOD HAINES,	}	SUR INDICTMENT. OBTAINING MONEY BY FALSE PRETENSES, &c.	10
Defendant in Error,			
vs.			
STATE OF NEW JERSEY,			
Plaintiff in Error.			

STATE OF THE CASE

CHARLES F. SEXTON, Esq., for the State.

JOSEPH REILLY and ROBERT PEACOCK, Esqs., for the 20
Defendant.

The answer of Rulif V. Lawrence, Esquire, Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions of the Peace within named, the entire record of the proceedings had upon the trial of the plaint, whereof mention was within made, with all things touching the same, I certify to the Justices of our Supreme 30
Court of the State of New Jersey, at Trenton. at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

RULIF V. LAWRENCE,
Judge.

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH, } ss.

Be it remembered that at a Court of Oyer and Terminer held at Freehold in and for the said County of Monmouth on the first Tuesday in October, one thousand nine hundred and fourteen, before Samuel Kalisch, Esquire, one of the associated Justices of the Supreme Court of Judicature of the State of New Jersey, and John
10 E. Foster, Esquire, Presiding Judge of the Court of Common Pleas and of the General Quarter Sessions in and for the said County of Monmouth according to the form of the statute in such case made and provided by the oaths of

- | | |
|-------------------------|----------------------|
| 1. Thomas L. Slocum | 11. John W. Keough |
| 2. William H. Alexander | 12. John Lively |
| 3. Charles T. Clayton | 13. William Maurer |
| 4. Henry J. Ely | 14. Franklin Rue |
| 20 5. Curtis B. Forman | 15. Joseph P. Sproul |
| 6. Willard A. Hegerman | 16. Henry C. Tilton |
| 7. George T. Jones | 17. John H. Willey |
| 8. George H. Ivins | 18. P. Otto Weigand |
| 9. Jonathan H. Jones | 19. C. Ward Golden |
| 10. William Kain | |

good and lawful men of said County of Monmouth, then and there duly summoned according to the form of the statute in such cases made and provided and then and
30 there duly sworn and charged by the said Samuel Kalisch, Judge as aforesaid, presiding in said court of Oyer and Terminer in and for the said County of Monmouth to inquire in behalf of the State of New Jersey in and for the said County of Monmouth.

It is presented in the manner and form following,
to wit:

In the Court of Oyer and Terminer of Monmouth
County, October Term, in the year of our Lord one
thousand nine hundred and fourteen

MONMOUTH COUNTY, TO-WIT:

The Grand Inquest of the State of New Jersey in
and for the body of the County of Monmouth upon their
respective oaths 10

PRESENT that Linwood Haines, being then there
President of a certain business concern known as Lin-
wood Haines, limited, incorporated, late of the City of
Camden in the County of Camden on the twenty-sixth
day of October in the year of Our Lord one thousand
nine hundred and fourteen with force and arms, at the
Township of Freehold, in the County of Monmouth,
and within the jurisdiction of this Court, devising and 20
intending to cheat and defraud one George W. Blatchley
of his goods, moneys, chattels and property, unlawfully,
knowingly and designedly did falsely represent, pretend
and say to the said George W. Blatchley that a certain
business concern known as Linwood Haines, Limited,
of Camden, Inc. was then and there in a sound financial
condition; paid cash for all of the goods purchased by
it at wholesale; was solvent and its shares of stock were
then and there a safe and sound investment, and did 30
then and there apply to the said George W. Blatchley to
invest his money in said shares of stock as a safe and
reliable investment; whereas in truth and in fact the said
Linwood Haines, Limited, of Camden, Inc. was not in
a safe and sound financial condition; did not and had
not paid cash for the goods purchased by it at wholesale,

was not solvent and its shares of stock were not then and there a safe and sound investment, as he, the said Linwood Haines then and there well knew, and all of which said false pretence and pretences the said Linwood Haines then and there well knew to be false; by color and means of which said false pretence and pretences he, the said Linwood Haines did then and there unlawfully knowingly, and designedly obtain from the said George W. Blatchley for said Linwood Haines, Limited, of
10 Camden, Inc., his goods, moneys, chattels and property, to wit, the sum of One Hundred Dollars, money, being then and there the property of the said George W. Blatchley with intent to cheat and defraud the said George W. Blatchley to the great damage of the said George W. Blatchley contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

RULIF V. LAWRENCE,
Prosecutor of the Pleas.

20

And afterwards, to wit, on the seventeenth day of December, in the year of our Lord one thousand nine hundred and fourteen, at a session of the Court of Quarter Sessions aforesaid, being as yet of the term of October aforesaid, before the Honorable John E. Foster, Esquire, judge, at Freehold aforesaid,

It is ordered that all the indictments be filed and
30 retained in this court for trial or other disposition.

Whereupon on the thirty-first day of December, in the year of our Lord, one thousand nine hundred and fourteen, at a court of general quarter sessions at Freehold aforesaid, in the County of Monmouth aforesaid as yet of the term of October aforesaid, before John

E. Foster, presiding Judge of the Court of Common Pleas here cometh the said Linwood Haines, who, being brought to the bar here in his proper person by Cornelius B. Barkalow, Esquire, Sheriff of the County of Monmouth to whom also he is here committed and having heard the indictment read and being commanded of and concerning the premises in the said indictment above specified and charged how he will acquit himself thereof says he is not guilty thereof and thereupon for good and evil he puts himself upon the country and Rulif V. 10
Lawrence, Esquire, Prosecutor of the Pleas for said County who prosecutes for the State of New Jersey doth the like.

Therefore let the said indictment be continued until the nineteenth day of February, in the year of our Lord one thousand nine hundred and fifteen, whereupon it was further continued until the twenty-fourth day of February, in the year of our Lord one thousand nine hundred and sixteen, and the jury thereupon here come before the judge aforesaid at Freehold aforesaid in the 20
County of Monmouth aforesaid on the twenty-fourth day of February in the year of our Lord one thousand nine hundred and sixteen being of the term of January, one thousand nine hundred and sixteen, twelve good and lawful men each of whom shall be a citizen of this state and resident within the County and State aforesaid above the age of twenty-one years and under the age of sixty-five years and by whom the truth of the matter may be better known and who are not of kin of the said Linwood Haines to recognize upon their oaths whether 30
the said Linwood Haines be guilty of False Pretences in the indictment above specified or not guilty because as well Charles F. Sexton, Jr., Prosecutor of the Pleas for the said County of Monmouth aforesaid who prosecutes for the said State of New Jersey in that behalf as the

said Linwood Haines has put himself upon the said jury and the same day is given to the parties aforesaid and the same place at which time, that is to say, on the twenty-fourth day of February, in the year of our Lord one thousand nine hundred and sixteen, being of the term of January aforesaid, before the judge aforesaid here cometh as well the said Charles F. Sexton, Prosecutor of the Pleas who prosecutes as aforesaid as the said Linwood Haines being brought to the bar here in
10 his proper person by the said Sheriff of the county aforesaid and the jurors of said jury by the Sheriff of the county aforesaid for this purpose are impanelled and returned, that is to say:

- | | |
|--------------------------|----------------------|
| 1. William H. Vanderveer | 7. Frank A. Poole |
| 2. A. C. Lewis Youmans | 8. William B. Wilson |
| 3. Joseph Hines | 9. Henry Kahle |
| 4. William Asay | 10. Thomas Luke |
| 5. Frederick Shible | 11. Harry Luke |
| 20 6. John P. Ansbro | 12. Charles Bearmore |

being called come who being chosen, tried and sworn to speak the truth of and concerning the premises and thereupon the trial of said issue commenced before the said court and jury on the twenty-fourth day of February, nineteen hundred and sixteen, and continued on the twenty-fifth day of February, nineteen hundred and sixteen, and on the twenty-ninth day of February, nineteen hundred and sixteen, and the evidence being closed and
30 counsel heard the said issue under a charge of the said court was submitted to the said jury, and the said jury in charge of the said officers in court duly sworn for that purpose were taken to a private room to consider of their verdict, and afterwards at Freehold aforesaid, on the first day of March, in the year of our Lord one

thousand nine hundred and sixteen, at 8.18 o'clock, a. m. the jury returned into and before said court in charge of said officers sworn as aforesaid to keep them in charge, and then and there in the presence of said Charles F. Sexton, Prosecutor of the Pleas and of the said Linwood Haines, do say, upon being asked in due from that they have agreed upon their verdict and by their foreman further say that they find the defendant Linwood Haines guilty of False Pretences as he stands charged in the indictment. 10

Whereupon it is ordered that the verdict and proceedings be entered and recorded and the defendant be remanded and thereupon the said Linwood Haines on the tenth day of March, nineteen hundred and sixteen, being produced in and before the court at Freehold aforesaid, it is ordered and adjudged by the court that the defendant be committed to the county jail for three months and pay a fine of five hundred dollars and to stand committed until the said fine and costs are paid.

Judgment signed this tenth day of March, A. D., 20
1916.

RULIF V. LAWRENCE, P. J.

STATE OF NEW JERSEY
COUNTY OF MONMOUTH } ss.

I, Joseph McDermott, Clerk of the said County, and also clerk of the Court of Common Pleas constituting the general quarter sessions do hereby certify that the foregoing copy of record and proceedings in the case of State vs. Linwood Haines is a true and correct copy thereof as the same remains on file in my office.

10

IN WITNESS WHEREOF I have hereunto
(L. S.) set my hand and affixed the official seal of
(Stamp) said County this twentieth day of March,
A. D., nineteen hundred and sixteen.

JOSEPH McDERMOTT,
Clerk.

and given to your husband at the same date that the check was given?

A. Yes, the same date.

Cross Examination.

By Mr. Reilly.

Q. Were you in the courtroom yesterday?

10

A. I was, yes, sir.

Q. You heard the testimony of your husband?

A. I did.

Q. I suppose that your husband and yourself have frequently discussed this matter?

A. Oh, well, we have discussed it ever since it happened.

Q. And compared notes—

A. Why, there were no notes to compare, nothing but facts.

Q. You haven't heard my question, madam. I 20 hadn't finished it.

A. Well, repeat it again, please.

Q. And you compared notes as to the occurrences taking place upon the day that you testified to?

A. Perhaps I don't understand you plainly enough to answer that question.

Q. How did you and your husband discuss the matter?

A. Why, we never discussed it any further than facts. We both knew the facts and we have never dis- 30 cussed it further.

Q. Well, did you discuss all the facts?

A. Well, I think we have.

Q. And did you discuss all the occurrences of the day in question?

A. What day?

Q. Well, the day your husband gave the check, the day that Haines and Richardson called.

A. Why, yes, I suppose so. We couldn't help it.

Q. And how many times have you discussed it, Mrs. Blatchley?

A. Oh, my Lord! I couldn't answer that question.

Q. Several times?

10 A. I couldn't answer that question.

Q. Why?

A. Well, because that is a common occurrence.

Q. When was your most recent discussion of it?

A. Well, that I couldn't tell you.

Q. Was it yesterday?

A. No, sir.

Q. Was it the day before?

A. I don't know. I couldn't answer that question.

Q. Why?

A. Not to give it any very definite answer.

20 Q. Have you discussed it within a week?

A. What, this Linwood Haines affair?

Q. Yes.

A. Oh, sure.

Q. And did you discuss it within a month?

Mr. Geran. She says within a week.

Mr. Reilly. I understand that. Outside of a week.

30 A. We discussed it, of course we have discussed it. I couldn't give you any particular details as to that matter at all.

Q. Did you discuss it last night?

A. We discussed it all the time. We can't discuss anything else hardly, today and yesterday.

Q. I suppose it was a general topic?

A. As far as the facts are concerned; nothing else.

Q. I suppose it was a topic of discussion for every meal during the last month wasn't it?

A. Oh, no, not as bad as that.

Q. Well, do you suppose that you and he within the last month discussed it as many times as a dozen times?

A. Well, I couldn't answer that.

Q. You did discuss it last night? 10

A. Yes, and we discussed it this morning.

Q. And this morning again?

A. Oh, sure.

Q. And did your husband call your attention to what he testified to yesterday?

A. No, sir.

Q. Was that made a subject of discussion at all?

A. No, sir.

Q. Did your husband ask you whether or not you heard all he testified to? 20

A. No, sir.

Q. He didn't impress upon you, Mrs. Blatchley, that it was necessary for your testimony and his to gee, so to speak?

A. Nothing further than the facts. I am here to tell the truth.

Q. Well, what was the nature of your discussion?

A. Well, that I can't tell you.

Q. Why did you find it necessary to discuss it at all? 30

A. Well, that is human nature, I suppose.

Q. Then why did you discuss it?

A. Because we felt like it.

Q. Is that the only reason, Mrs. Blatchley?

A. I suppose it is.

Q. You didn't discuss it for the purpose of corroborating each other?

A. No, sir; didn't have to.

Q. Now you remember very distinctly all that occurred there, do you?

A. I think I do so far as I have related.

Q. What time of day did you say it was when Mr. Haines and Mr. Richardson called?

A. Well, we had just eaten dinner and Mr. Blatchley and myself and my younger son were there and my son had just started for school.

Q. This jury doesn't know what time you eat dinner.

A. We eat dinner at twelve o'clock or soon after.

Q. Was it about one o'clock?

A. Not far from one o'clock. I couldn't tell you just to the minute.

Q. In the neighborhood of one?

A. Yes.

20 Q. How did they arrive there?

A. With an automobile.

Q. Had they announced their coming in any way.

A. No, sir.

Q. It was a sudden call?

A. It was a sudden call.

Q. And they were entirely unexpected?

A. They were unexpected.

Q. You have a telephone in your house?

A. We did.

30 Q. You don't recall your husband having received a telephone call shortly after the arrival of Haines?

A. Never.

Q. He didn't receive one, did he, to your knowledge?

A. No, sir; not at that time.

Q. And you don't know whether or not Mr. Haines did call on the phone and announce his arrival at your house?

A. I know he didn't.

Q. You are positive of that?

A. I am positive of it.

Q. Where did your husband come from before the dinner hour, or twelve o'clock?

A. Well, I couldn't tell you that.

Q. Had he been in the house up to the dinner hour? 10

A. I couldn't tell you that.

Q. Why?

A. Because my husband is a man of business and he is all over around home.

Q. You don't know whether he was away from home before twelve o'clock that day?

A. No, sir; I don't.

Q. And you don't know whether he had been in the house all the morning or not? 20

A. Yes, I know that he hadn't. I know he is never in the house unless he is sick.

Q. Do you know whether or not he had come to Freehold that morning?

A. I do not.

Q. Do you know whether he was busy with his ducks that morning?

A. I do not.

Q. Do you know whether or not on that morning he was engaged in his farming operations? 30

A. I do not.

Q. Now what time of day was it when Mr. Haines—they didn't have dinner with you?

A. No, sir.

Q. What time of day was it when Haines and Richardson left?

A. Well, I couldn't tell you that. I know they spent the biggest part of the afternoon with us and I couldn't tell you just the exact hour.

Q. Were you there in the room with them as long as they were there?

A. I was.

10 Q. Never left the room?

A. I did not.

Q. Do you keep a servant?

A. No, sir.

Q. Where did you receive them or where were they received, in which room?

A. In the sitting room, the living room they call it here.

Q. That is off the dining-room?

A. Yes.

20 Q. Now can't you tell us whether they stayed in your sitting room that afternoon for an hour or two hours or three?

A. Well, I couldn't tell you definitely. I should say they were there all of two hours.

Q. So that it must have been in the neighborhood of three o'clock before they left.

A. Well, I couldn't tell you. I don't pretend to tell you the time of day they left. I know they made a nice call.

30 Q. Now why did you find it necessary to sit in the room with your husband and these gentlemen?

A. Because I felt interested.

Q. In what way?

A. In more ways than one.

Q. Well, in what way?

A. Well, it was a business matter.

Q. And does your husband perform no business transactions without your being aware of them?

A. How is that? I don't understand.

Q. Your husband performs no business transactions without making you aware of them?

A. Certainly he performs business transactions.

Q. He don't tell you every time he is going to leave the farm or go to Freehold or go elsewhere?

A. I guess not, hardly.

Q. Did he ask you to remain there that day while that business transaction was going on? 10

A. No, sir.

Q. It was his money that was invested and not yours?

A. Well, I don't think so. I think it was just as much mine as it was his.

Q. Had you earned any part of it?

A. I certainly did.

Q. How?

A. Cooperating with him in the business and 20 working in the business. We never had but one pocket-book and that is his as well as mine.

Q. Did you know of any other business transactions that your husband had with the Linwood Haines Company?

A. I don't understand that question enough to answer it.

Q. Did you know of any other business transactions which your husband had had previously with the Linwood Haines Company? 30

A. Well, now, would the—

Q. Yes or no.

Mr. Geran. Well, if she understands it.

A. Just let me ask you. Perhaps I don't understand you properly to answer that.

Q. You are not free to ask questions. The stenographer will repeat the question.

(Question repeated.)

A. No further than the—

10 Mr. Reilly—Well, I submit she should answer yes or no.

A. Well, I don't know whether to say yes or no.

Q. Well, you do know whether to say yes or no. I insist upon a direct answer.

A. Well, if I will have to say—

Q. Pardon me—

Mr. Sexton. I submit—

20 Mr. Reilly. She can make her explanation afterwards.

The Court. Yes, I think she may say yes or no and then make an explanation afterwards.

A. Then I did, your Honor, yes, if—

Q. What were those business transactions you have a knowledge of?

30 A. The business transactions and the only ones that I know of direct with Linwood Haines was the one that we had, that he had when he purchased the goods the day of the stockholders' day in Camden.

Q. Did you know of your husband having bought stock on that day?

A. No, sir; not on that day he didn't buy any stock.

Q. He didn't tell you that?

A. He didn't buy any stock that day.

Q. Did you know of his having bought stock previous to the 26th of October?

A. Of Mr. Richardson.

Q. Was that the same Mr. Richardson that was there with Mr. Haines?

A. Yes, sir.

10

Q. And where was that stock bought, if you know?

A. Why, at what place, do you mean?

Q. Yes.

A. At our home.

Q. And were you present with Mr. Richardson and your husband during the negotiations for the purchase of that stock?

A. Yes, sir.

Q. Did you ask these same questions of Mr. Richardson that you say you did of Mr. Haines?

20

A. Well, I don't know that I did.

Q. Do you know that anybody did?

A. Yes, sir.

Q. Who?

A. Mr. Blatchley and my son, we were all three in the room.

Q. And Mr. Blatchley asked what questions of Mr. Richardson?

A. Why, he asked the same questions, as to the reliability of the company.

30

Q. And as to whether of not it was safe and sound investment?

A. Yes, sir.

Q. And you heard what Mr. Richardson said?

A. I did.

Q. Did you and Mr. Blatchley receive assurance that it was a reliable company?

A. We did.

Q. And almost in the same terms that you got from Mr. Haines?

A. Yes, sir.

Q. Then why did you think it necessary to ask this question of Mr. Haines, when you already had the information from Mr. Richardson?

10 A. Because Mr. Haines was the president of the company.

Q. You hadn't seen him before that day?

A. Yes, I saw him at Camden the day of the stockholders' day.

Q. Why didn't you ask him then?

A. Because I didn't have any occasion to ask him then.

Q. Why?

A. Because I wasn't doing business with him.

20 Q. You knew that your husband already had stock?

A. Yes.

Q. What?

A. Sure I did.

Q. And you felt interested in knowing whether it was good stock or not?

A. Certainly.

Q. Now did you go down to Camden with your husband?

30 A. Certainly.

Q. For what purpose?

A. Well, just the same as any other wife would go to such a place, I suppose.

Q. Well, there must be some special reason. Was it simply for the trip?

A. Well, partially.

Q. Or did you go—

A. Partially for the trip and partially to see what was going on and partially to purchase goods.

Q. Did you purchase any goods upon the day in question?

A. We did.

Q. Pay for them?

A. We did.

Q. He got his discount?

10

A. Yes, sir.

Q. And what did you see?

A. What did I see in the store, you mean, down at Camden?

Q. Yes.

A. Well, I couldn't tell you all I saw. I saw lots of things.

Q. Did you see the officers of the company there?

A. Yes, I saw the officers.

Q. Were they introduced to you?

20

A. Some of them.

Q. To whom were you introduced as officers?

A. Well, really I don't know whether I can tell.

Q. Were you introduced there to the president, Mr. Haines?

A. Yes, sir.

Q. And had quite a talk with him?

A. Yes, sir.

Q. He knew that your husband was a stockholder?

30

A. He did.

Q. Did you discuss the affairs of the company with him on that day?

A. I did not.

Q. Did your husband?

A. Well, I don't know whether he did or not. I don't know that he—

Q. You didn't discuss them?

A. No, I wasn't with him all the time.

Q. Were you introduced to the treasurer of the company?

A. I don't know whether I was or not.

Q. Were you introduced to the secretary?

A. The secretary wasn't there.

Q. Well, to what officers? You say a few; to what officers?

10 A. Well, really I couldn't remember whether I was introduced to any—whether they really held any office.

Q. Why can't you remember to whom you were introduced?

A. I was introduced to his father.

Q. Did you talk with him on the subject?

A. Yes, sir.

Q. You mean Mr. Haines' father?

A. Mr. Haines' father.

20 Q. Did you discuss the affairs of the company with him?

A. No, sir; I didn't.

Q. Didn't ask him whether it was a sound investment?

A. I did not.

Q. You didn't ask him as to the reliability of the company?

A. No, sir.

30 Q. Did he volunteer any information as to his relations with the company?

A. No, sir.

Q. Not at all?

A. Not to me; no, sir.

Q. Now why is it that you can't remember to what officers you were introduced?

A. Well—

Q. Your memory is good on everything else.

A. Well, really I don't remember anything further than we was introduced to the president and that was Mr. Haines.

Q. Can you give any reason for your faulty memory?

A. And I don't know whether Mr.—or the secretary—

Q. Never mind that. Can you give any reason for your lapse of memory? 10

A. No, sir; I can't. I don't remember any of the officers.

Q. Can you give any reason why you can't remember as definitely what occurred upon the date of your visit as you can remember what occurred three days later?

A. I don't understand that question.

Q. Mr. Haines and Mr. Richardson were at your house on the 26th or 27th of October? 20

A. Yes.

Q. When the stock was bought?

A. Yes.

Q. Three days before or four days before, on the 23rd, you and your husband visited this plant in Camden; isn't that right?

A. I think so.

Q. Now you remember distinctly everything that occurred at your house occurring between Haines and Richardson and your husband, don't you? 30

A. There at our place?

Q. You remember distinctly?

A. Yes, I remember that.

Q. Every word that was said?

A. Well, I wouldn't say that I remembered every word.

Q. Well, you remember everything that you have testified to?

A. Yes, I remember what I testified to.

Q. Now why isn't your memory vivid enough to carry you back four days prior to that and tell us all that occurred at the plant in Camden?

A. Well, I can tell you what occurred as far as I
10 remember, if that is what you want.

Q. Now tell us what officers you were introduced to.

A. I don't remember that I was introduced to any special officer except the president.

Q. And that was Mr. Haines?

A. That was Mr. Linwood Haines.

Q. And you didn't say a word to him relative to the liabilities of the company or its reliability then?

A. No, sir; I didn't.

20 Q. You found a well stocked store?

A. Why, yes, sir; fairly well stocked.

Q. And stocked with what, general merchandise?

A. Yes.

Q. Did you make any comments upon what you saw to Mr. Haines?

A. No, sir.

Q. Not at all?

A. No, sir.

30 Q. Were you perfectly satisfied in your own mind at that time that it was a well paying business?

A. Why, so far as—

Q. From what you observed?

A. Why, so far as I could see.

Q. And did you at that time think that the stock—you didn't know that your husband held stock before that time?

A. I knew that he had \$100 of stock.

Q. Did you form this conclusion from what you saw, that it was a good safe investment, that \$100?

A. Why, really I couldn't come to any conclusion any different, because I didn't see enough that day.

Q. Any different from what?

A. Any different to what it was a good investment. 10

Q. You didn't so express yourself to Mr. Haines?

A. No, sir; I didn't.

Q. Nor you didn't so express yourself to anybody else?

A. No, sir.

Q. Not even to your husband?

A. No, sir; not at that time.

Q. Did you afterwards?

A. I don't know whether I did or not.

Q. Why don't you know? 20

A. Well, I can't answer that question. It was just simply a matter of course. I couldn't recall it as I expressed myself.

Q. Now when Mr. Haines and Mr. Richardson called four days later did you give them any expression at that time as to what you had observed in the store?

A. I can't remember.

Q. Can't remember?

A. That I did.

Q. Did you tell them anything about the impres- 30
sions that you formed by reason of your visit?

A. Not that I recall.

Q. Do you want to be bound by that answer, not that you recall, not that you remember?

A. I don't recall of giving any expression as to

the opinion I formed the day before. I don't remember that I gave any answer to them.

Q. Why don't you remember?

A. Well, there was nothing particular to remember in that line that I know of.

Q. Then you only remember the things that you regarded as important?

A. Well, that is all.

Q. And it is with that idea in mind that you are
10 giving your testimony now?

A. How is that?

Q. And it is with that idea in mind that you are giving your testimony now?

A. Certainly I am giving my testimony so far as I can remember the truth in that case.

Q. And no further?

A. And no further.

Q. And you don't remember things that you didn't consider as material to this case; is that right?

20 A. Repeat that again, please.

Q. You don't remember things that you didn't consider as material to this case so far as Mr. Haines is concerned?

A. Why, I don't know whether I can answer that question intelligently.

Q. And you will be bound by that answer, will you?

The Court. She undoubtedly is bound by it. That
30 is a superfluous question.

Q. So for the two hours that you and Mr. Haines and your husband were discussing matters in the sitting room you have told this jury all that you remember?

A. Of all the business transactions or affairs pre-
taining to this case.

Q. It didn't take two hours to carry on the simple
conversations that you have related, did it?

A. Well, I don't know whether it did or not.

Q. It didn't take any longer for Mr. Haines and
Mr. Richardson to converse than it has taken you to
relate what you remember; is that true?

A. Why, not the part that I have related, I pre-
sume not. 10

Q. And they didn't repeat over and over again
what you have related, taking two hours in which to do
it?

A. Well, you can fix that just to suit your motion.

Q. All right. I want to fix it to suit yours.

A. They was there talking this business transac-
tion and regarding their business.

Q. And all the time your dinner dishes, your din-
ner table, laid in the dining room?

A. It did, sir, just exactly the way it was left. 20

Q. Awaiting your offices?

A. Yes, sir.

Q. And unattended to?

A. Yes, sir.

Q. Did you leave the room at all that day?

A. No, sir; I did not.

By the Court.

Q. That is, while the defendants were there. 30

A. Yes, I understand.

By Mr. Reilly.

Q. Not at all?

A. No, sir.

Q. Who wrote the check?

A. Mr. Blatchley.

Q. How long were Haines and Richardson there before the check was written?

A. Well, I couldn't tell you how long. The check wasn't given until they were nearly ready to go home.

Q. How long before they left was it given?

A. I couldn't tell you that either.

10

Q. Five minutes?

A. Well, I can't state no time whatever.

Q. An hour before?

A. No, I don't think an hour.

Q. Half an hour before?

A. I couldn't tell you.

Q. Your memory is again faulty then?

A. No, sir; my memory, I told you at the start that I couldn't give you the number of minutes. I don't pretend to.

20

Q. Did your husband say anything at all?

A. Yes, sir; he did.

Q. What did he say?

A. I couldn't tell you.

Q. You can't tell?

A. No, sir.

Q. Again your memory is faulty?

A. I don't repeat his conversation because—

Q. But you heard it?

A. I heard it.

30

Q. You were present?

A. Yes.

Q. And you can't remember one word that your husband said?

A. Well, if I could remember one word I couldn't give it as testimony here.

Q. Before he wrote the check what did he say?

A. To whom?

Q. Anybody present.

A. Before he wrote the check he asked me what I thought about the investment and I told him I was willing to invest if he was.

Q. Is that all he said?

A. Why, that was what he said to me in regard to this business.

Q. Is that all that you remember that he said? 10

A. Why, I couldn't recall anything, his regular conversation, don't pretend to.

Q. Did he produce the checkbook from any particular place?

A. No, he didn't bring the check book.

Q. Where did he produce the check book from, his pockets?

A. No, sir.

Q. Where?

A. From the desk in the dining-room. 20

Q. And where did he sit when he wrote the check?

A. Well, he went out to the desk. That is where he always writes his checks, at the desk.

Q. Did you see him write it at the desk?

A. No, sir; I didn't see him write it at the desk.

Q. He went in another room to write it?

A. He went in the dining-room.

Q. You were all sitting in the dining-room?

A. No, sir; we were not in the dining-room.

Q. Oh, the sitting room. Pardon me. When he 30 came in with the check to whom did he hand it?

A. He handed it to Mr. Haines.

Q. What did Mr. Haines do with it?

A. He took it and put it in his book that he took out of his pocket, thanking him for the check.

Q. You say Richardson wrote the receipt?

A. He handed the receipt to Mr. Haines.

Q. Who did?

A. Mr. Richardson.

Q. You remember that distinctly?

A. I remember it.

Q. And what did Haines do with it?

A. He gave it to Mr. Blatchley.

Q. You remember that very distinctly?

10

A. I do.

Q. Now when you and your husband were down there to the plant of the Haines Company on the 23rd did you see more than one store?

A. Yes, sir.

Q. How many?

A. Two.

Q. And didn't your husband and yourself on the way home discuss what you had seen?

A. Well, I presume so.

20

Q. Well, now, don't you know whether you did?

A. No, I can't tell you really. I know what we discussed in that line.

Q. What was it?

A. There was nothing in particular that I could recall to my mind.

Q. I am speaking about the stores.

A. Well, I don't know. I presume we did but I couldn't tell you.

Q. Did you both agree that they were well stocked?

30

A. Well, we—yes, as far as I can remember.

Q. And did you notice that there was a flourishing business being done there?

A. Just that day I don't think there was a very flourishing business done that day.

Q. Did you speak about the amount?

A. We did.

Q. Yes, you spoke about that?

A. And the bookkeeper wasn't there and of course—

Q. Never mind about the bookkeeper.

A. Of course we made a note of that.

Q. Did you tell your husband that you had a talk with Mr. Haines, Sr.?

A. I couldn't tell you whether I did or not.

Q. You can't tell that?

10

A. I bought all of our groceries of Mr. Haines, Sr., who was the man in the grocery part.

Q. Of course your husband exchanged views with you and told you what he thought too, didn't he?

A. I don't know.

Q. You don't know about that?

A. I couldn't recall that.

Q. Did you both conclude that there was a good business being done there?

A. Why, so far as we could see. We couldn't see 20 anything to the contrary.

Q. And you were satisfied that it was a good business and a flourishing one?

A. So far as we knew at that time.

Q. And did you then resolve to buy some stock?

A. No, sir.

Q. Did you speak as to the advisability or not?

A. No, sir.

Q. You are sure about that?

A. I am very confident of it.

30

Q. Well, now, did your husband's visit to the store on the 23rd have considerable influence upon your future conduct and your and his future conduct relative to the purchase of stock?

A. I don't know that it did. I don't know anything about it.

Q. But aside from any conversation that you had with Haines you were satisfied that he was conducting a good business there, weren't you?

A. I didn't just get that.

(Question repeated.)

10

A. Why so far as we could see at that time.

Q. And a business that seemed to be a paying one?

A. Yes.

Q. During those two hours' conversation of your husband, between your husband and yourself and Mr. Haines and Richardson, did Mr. Haines at any time leave the room?

A. No, sir.

20

WALTER DOUGLASS, sworn for the State.

Direct Examination by Mr. Geran.

Q. Where do you reside, Mr. Douglass?

A. Audubon, New Jersey.

Q. By whom are you employed?

A. United Distributing Company, Camden.

30

Q. How long have you been employed by them?

A. A little over a year now.

Q. Before you worked for them whom did you work for?

A. Linwood Haines.

Q. How long had you worked for Linwood Haines?

A. About three years.

Q. In what capacity were you working there?

A. Manager of the implement department.

Q. And during the time that you were employed by them were you always in the capacity of manager in this implement department?

A. I was.

Q. Do you know who was the president of the company?

A. Linwood Haines. .

10

Q. Do you know who the other officers were?

A. Joseph Haines was the vice-president, G. Horace Roberts was secretary.

Q. Linwood Haines was the president, who was vice-president?

A. Joseph Haines.

Q. Who is Joseph Haines?

A. Mr. Linwood Haines' father.

Q. And what position did Roberts hold?

A. Secretary.

20

Q. Do you know who was the buyer for your department?

A. I was.

Q. How long have you been buyer?

A. All the time I have been with the company.

Q. Do you know how your concern paid for the goods which you bought?

A. I don't know that I could answer that.

Q. Do you know whether the goods which your concern bought were paid for in cash or not?

30

Mr. Peacock. I object. He just stated he didn't know anything about it.

Mr. Reilly. Furthermore the question is leading.

The Court. I think I will permit this witness to answer under a proper question as to the method adopted by the concern in buying, whether on terms or in cash, if he knows.

Mr. Reilly. If your Honor please, here are two questions: Do you know how your concern paid for its goods? He cannot answer that. He answers no. Do you know whether your concern paid for its goods in
10 cash. Now we submit that the first answer—

The Court. I think the second is leading. I think the first may be very properly misunderstood by the witness.

Mr. Geran. I will withdraw that and ask this question.

Q. Do you know the method of payment by the
20 Linwood Haines Company of America to the people from whom it bought goods?

A. I don't know the manner of their payment. I only know the manner in which the goods were bought.

By the Court.

Q. You say you know the terms on which they were bought?

30 A. I know the terms on which they were bought.

By Mr. Geran.

Q. What were the terms?

A. They were bought thirty to sixty days.

Q. Of whom did you buy?

A. Well, numbers of different firms.

Q. Did you buy anything except in the implement department?

A. That is all.

Q. Do you know the terms upon which goods were bought for other departments?

A. I do not.

Q. You say you had been buying for three years?

A. Yes.

Q. And during the three years what have you to say as to the terms upon which you bought goods for the implement department? 10

A. The terms were usually thirty to sixty days, were the terms given when the order was placed.

Q. Were you ever with any of the officers of this company or Mr. Linwood Haines when the stock of this company was offered for sale?

A. No.

Q. Are you a stockholder?

A. No, sir. 20

Q. Were you ever a stockholder?

A. No, sir.

Q. Did you ever have stock offered you in that company?

A. Yes.

Q. By whom?

A. Mr. Haines.

Q. When?

A. When I first went with him.

Q. And did you take that? 30

A. No, I think not.

Q. Were you present at the stockholders' meeting on November 18th?

A. I was, secretary of the meeting.

Q. Was there a statement made by Mr. Haines at that meeting?

A. Yes.

Q. Do you recall what the statement was?

A. Well, it was very lengthy, about twenty-eight pages of typewritten matter. It is pretty hard to remember all of it.

Q. Will you tell us as far as you can recall what took place at that stockholders' meeting?

10

Mr. Peacock. I object, on the same grounds that we objected to the other witness, being subsequent to the date of the alleged false pretence.

The Court. Yes, it is admitted.

A. Mr. Haines read a statement stating that the company needed more money, and I could not say the figures that he gave at that time. There was mention
20 made of about what the debts were.

Q. Was there also a statement as to the assets?

A. I think so.

Q. Do you know whether there had been a meeting of the stockholders of the company prior to that time?

A. Yes, sir.

Q. When was that?

A. That was about ten days previous to that.

Q. Where was that meeting held?

A. Hotel Ridgway.

30

Q. Where is the Hotel Ridgway?

A. Front and Market Streets, Camden.

Q. Who were present as far as the officers of the company were concerned?

A. Mr. Roberts was the only officer of the company.

Q. Was Mr. Haines present?

A. No, sir.

Q. How many stockholders were present?

A. I should say about fifteen.

Q. Were any of the Freehold stockholders present?

A. No, sir.

Q. Was there a meeting of the stockholders that you know of prior to that time?

A. Not that I know of.

Q. What was the subject matter of discussion of 10
the stockholders at this time in the Hotel Ridgway?

Mr. Peacock. I object to a statement not in the presence of the defendant.

The Court. What date was that?

Mr. Geran. It was ten days prior to the 18th, about ten days prior.

20

Mr. Peacock. The defendant was not there.

Mr. Geran. That is true, the defendant was not present, but Mr. Roberts was present, and Mr. Roberts is one of the officers of the company.

The Court. That doesn't make any difference.

Mr. Geran. I understand there is no direct knowledge attributable to Mr. Haines only in so far as Mr. 30
Roberts was an officer of the company, and I think it is fair for the jury to say whether or not the information which Mr. Roberts obtained at that meeting as an officer of the company was communicated to Mr. Haines and

whether it is a fair presumption that he knew of the matter which was there discussed.

The Court. In other words, you want the court and jury to guess that Roberts told what had been said at that meeting to Mr. Haines, don't you?

Mr. Geran. I want the jury to conclude as to whether or not the matter of discussion there was a
10 matter which was brought to Mr. Haines' attention.

The Court. No, you can't do that at all. The objection is sustained.

Q. Did Mr. Haines at or about the 26th or the 27th of October talk to you about the financial condition of this company?

A. The 26th of October?

Q. Or the latter part of October, the 26th or the
20 27th or any time prior to the 27th of October?

A. Not in October, I don't think.

Q. When did Mr. Haines talk to you about the financial condition of the company?

(Objected to.)

The Court. Of course you mean prior to the sales of stock to Blatchley?

30 Mr. Geran. Well, prior to October 27th.

A. I don't know of any time prior to October 27th.

By the Court.

Q. Did you report to Mr. Haines the result of the stockholders' meeting prior to the 27th of October?

Mr. Geran. No, the court is in error there. The meeting was not held until after.

The Court. I understood you were discussing the meeting prior to the 27th of October at which Mr. Haines was not present.

10

Mr. Geran. No.

Mr. Reilly. My memory served me that the meeting was the 13th of October.

The Court. I understood you were discussing the time prior to the 13th of November, at which no Freehold stockholder was present; isn't that so?

Mr. Geran. No, sir.

20

The Court. Very well. Then I am in error.

By the Court.

Q. What meeting was it at which you were present at which Mr. Haines was not which we were just talking about?

A. That was the meeting about ten days previous to November 18th. 30

Q. And you said at that meeting no Freehold stockholder was present, didn't you?

A. Yes.

Q. Now did you report—that is, ten days prior to the 18th of November?

Mr. Geran. Yes.

Q. Now did you report the result of that meeting to Mr. Haines?

A. Yes, sir.

By Mr. Geran.

10 Q. What did you tell him?

Mr. Peacock. That is objected to as being subsequent.

The Court. It will be admitted. The objection is overruled.

A. I told him there was a stockholders' meeting, that I was there—

20 The Court. One moment. Let's have our record right on that. That meeting was subsequent to the date of the conference at Freehold with Mr. Blatchley, wasn't it?

Mr. Geran. Yes.

The Court. I think the objection is well taken as to that, because that was after the alleged false pretence and therefore it would make no difference.

30

Mr. Geran. I would just like to be heard for a minute on that, about this point: that here is a meeting which was held on the 8th, presumably on the 8th day of November, at which time there was discussed the financial condition of this company. Now this financial con-

dition apparently existed and must have existed prior to the 8th day of November.

The Court. Yes, I understand what you are trying to do. You are trying to show that Mr. Haines knew that at the time of his visit to Blatchley at Freehold of the condition of his company, its different derelictions.

Mr. Geran. Yes.

10

The Court. How does the testimony as to the meeting of November 8th, after the visit to Blatchley at Freehold, have any bearing on that whatever? The meeting of November 13th was an entirely different situation. There Mr. Haines reported to his stockholders certain information which indicated that he had possession of knowledge at that time, and the jury may infer—I don't know whether they will or not; I will instruct them upon it—they may infer that that information was obtained and was in the possession of Mr. Haines at the time of his visit to Blatchley. But here you are now attempting to prove that he received additional information from Mr. Douglass on the 8th of November. The objection is sustained. 20

Q. Did you ever have a talk with Mr. Haines concerning the financial condition of this company prior to the 8th of November?

Mr. Peacock. I object to that as being subsequent to the date laid in the indictment. 30

The Court. If you will place the date the 27th of October I will admit it.

Mr. Geran. I would just like to thresh this out with the court.

The Court. Very well. I will permit you to do it.

Mr. Geran. If on the 8th of November or some date subsequent to the actual sale of this stock there was a conversation between this witness or any other witness and Mr. Haines which would show that even
10 after the sale of this stock that Mr. Haines discussed the financial condition and that that was a condition which had existed and must have in the nature of things have existed prior to the 8th of November or at the date of this conference I think it would be evidence, at least, of what was the financial condition of the company on October 27th or October 15th or some other date prior to the date of the conversation.

The Court. The trouble is your question does not
20 bring out that it is offered for that purpose. You asked this witness whether he had any conversation with Haines. If Haines said anything to this witness I will admit it, relating to the financial condition of the company, along the same lines that the November 15th meeting was admitted, and for the same reasons.

Mr. Reilly. The difficulty seems to be, if your Honor please, that the gigantic intellect of our learned brother has evolved an idea that is entirely different
30 from the—

Mr. Geran. From the idea of the gigantic intellect of the defendant's counsel.

Mr. Reilly. But it seems to be contrary to the ideas

of the court and I know that it is entirely contrary to the law as laid down. Now then, what may have occurred subsequent to the date laid in the indictment—and that is what he is confined to—is clearly illegal, and I have no doubt that your Honor is desirous of keeping this case as free of errors as possible, and it is with very deep and sincere regret that I realize that my learned brother is not equally solicitous.

(Question repeated. Did you ever have a talk with 10
Mr. Haines concerning the financial condition of this
company prior to the 8th of November?)

The Court. If Mr. Geran will reframe his question so that it will indicate that Haines had a conversation with Douglass with reference to the financial condition of the company on the 8th of November it will be admitted.

Q. Did Mr. Haines have a conversation with you 20
or make any statement to you concerning the financial
condition of this company on or about the 27th day of
October?

(Objected to. Objection overruled.)

A. No.

Q. Did you ever have any conversation with Mr.
Haines concerning the financial condition of this com-
pany at any time prior to the 8th day of November? 30

(Objected to. Objection overruled.)

Mr. Reilly. If your Honor please, I think it is objectionable as specifying a date. I think it might be fair

if the question was framed in this way: subsequent to the 27th of October; and if the answer is in the affirmative, then let the witness state what the date was and not have it placed in his mouth by the Prosecutor?

The Court. If Mr. Geran desires to accept the suggestion he may do so.

10 Mr. Geran. That is perfectly satisfactory to me.

Q. After October 27th did you have a conversation with Mr. Haines concerning the financial condition of the company?

A. I did.

Q. What was the date of it as near as you can recall?

A. I should say it was about November 6th.

Q. Where was the conversation held?

A. In the office.

20 Q. Who was present?

A. No one but Mr. Haines and myself.

Q. What did Mr. Haines say to you at that time about the financial condition of the company?

Mr. Peacock. I object on the ground that it is subsequent to the date as laid in the indictment and a future transaction.

30 The Court. It will be admitted. I propose to admit any testimony within a reasonable range of the date in question, which indicates a knowledge on the part of this defendant of the financial affairs of this company and you may have an exception.

(Objection noted for defendant as ground of appeal.)

A. He brought up the question of the meeting and he stated that he proposed calling a meeting of the stockholders, that he believed he could take care of the business; that he had a chance to get a little more money to put into the business and with that he would be able to take care of it.

Q. Did he say that they needed money? 10

Mr. Peacock. I object. The witness has just given the conversation.

By the Court.

Q. What did he say with reference to the nature of the business if anything?

A. Well, he believed that the business was in such shape that with a little— 20

Q. Not what he believed. What did he say?

Mr. Reilly. I object. We cannot except to the questions of the court, I understand.

The Court. I will permit you to do that if you wish. I will overrule you and allow you an exception.

(Objection noted for defendant as ground of appeal.) 30

A. He didn't give me any figures as to the standing of the company; he merely talked in a general way as to the condition of it.

Q. Well, what did he say the condition was?

Mr. Reilly. I object.

(Objection overruled. Objection noted for defendant as ground of appeal.)

A. He believed if the stockholders had not stepped in and held this meeting and caused him this trouble that the business was all right.

10 Q. Well, what was the immediate trouble as stated by him?

A. The stockholders getting together and calling this meeting.

Q. No, but in what respect was the company affected by its condition?

Mr. Reilly. If your Honor please, without interrupting all the time may I have a general exception to this line?

20 The Court. Yes, you may have an exception.

(Objection noted for defendant as ground of appeal.)

A. The idea of the stockholders was to throw it into bankruptcy if possible.

Q. No, the question is what did Mr. Haines say as to the condition of the company?

30 A. He stated that they were being pushed for money by some of the creditors, but he believed that they could take care of all their obligations.

By Mr. Geran.

Q. Did he say anything about the number of creditors that were pushing him?

A. No.

Q. Did he say anything about the money that was due to the creditors that were pushing him?

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.) 10

A. No, I don't think so.

Q. Did he say how long the creditors had been pushing him?

A. I don't think so.

Q. Did you ever communicate to Mr. Haines prior to this time the fact that any people of whom you bought goods were pushing for money?

A. Yes, I believe so.

Q. When did you tell him that? 20

A. I couldn't say the date; sometime previous to that; that some few people of whom I bought from had called my attention to the account, some few people previous to that had called my attention to their accounts.

Mr. Peacock. I understand there is no date set as regards these conversations?

The Witness. They are prior to the conversation of November 6th. 30

Mr. Peacock. Prior to October 27th or subsequent?

The Witness. Prior to that meeting, yes.

By the Court.

Q. How long prior, a week or ten days?

A. A week or ten days, yes. They asked me to speak to Mr. Haines about it, which I did, and reported that the account had not been paid.

By Mr. Geran.

10 Q. What did Mr. Haines say?

A. Promised to give it his attention.

Q. How many times did you speak to him about it?

A. Probably two or three times.

Q. Do you remember the first time that you spoke to him about it?

A. No, I couldn't state any date on it.

Q. How long prior to November 6th was it that you spoke the first time?

20 A. It was possibly two or three weeks.

By the Court.

Q. Just one question I should like to ask. You have said that the terms of purchase by your concern so far as you were concerned from the wholesaler were thirty and sixty days?

A. Yes, sir.

Q. Did that involve any discount?

30 A. If discounted ten days.

Q. But if paid in thirty or sixty days?

A. Thirty or sixty days it was regular.

Q. No discount?

A. No discount, except in some particular instances.

Q. And what were they, so far as you can recall?

A. They were special terms given to us.

Q. Then I wish you would state on the record the complete terms of the thirty or sixty day purchase as far as you can recall. Can you answer that?

A. Yes, thirty or sixty days.

Q. What were the terms?

A. The terms were thirty or sixty days, discount in ten days, and special cases I have known goods to be bought at better than thirty or sixty days, and a special large order, where it involved quite a little amount and some special goods, we would sometimes be granted more than that but it was only special cases.

Q. And did the discount follow in the special cases to which you refer?

A. In some cases it did.

Cross Examination.

By Mr. Peacock.

20

Q. What was your position with the Linwood Haines Company?

A. Manager of the implement department.

Q. And that was one of the different departments of the store, wasn't it?

A. Yes.

Q. And you say it was farming implements?

A. Farming implements, yes.

Q. You didn't have anything to do with the affairs of the company other than the buying and selling of machinery, did you?

A. That is all.

Q. Didn't know anything concerning the financial condition?

30

A. Not a thing.

Q. Didn't have anything to do with it?

A. Nothing whatever.

Q. Or paying or collecting bills?

A. Nothing to do with it.

Q. You didn't have anything to do with the making up of the accounts?

A. Nothing at all.

10 Q. And all you know in regard to these terms is that on certain machinery you purchased at thirty or sixty days?

A. That is the idea.

Q. And that was the usual trade custom, wasn't it?

A. That was right.

Q. Be considered purchasing for cash, thirty and sixty days, wouldn't it, in ordinary commercial enterprises?

A. It is considered cash, yes.

20 Q. And this conversation on November 6th between you and Mr. Haines, it was in regard to a couple of small bills of creditors for farming implements, wasn't it?

A. It was for something that had been purchased in my line.

Q. And Mr. Haines told you that they could take care of it, didn't he?

A. I believe he did.

Q. And they were taken care of?

30 A. I couldn't say.

Q. You haven't the information and don't know anything about that?

A. No, sir.

Q. All you know is that one of the creditors spoke to you about a bill; is that right?

A. That is right.

Q. And you told Mr. Haines about it?

A. Yes, sir.

Q. You have done that on different occasions, haven't you?

A. Yes, sir.

Q. It didn't call to your mind anything concerning the financial condition of the company, did it?

A. I don't know that it did at that time.

Q. And you didn't know anything about the financial condition of the company, did you? 10

A. No, sir.

Q. You were there as a manager and to take care of your department?

A. Yes, sir.

Q. That is all you know about the condition of the company?

A. That is all.

Q. You were one of the appraisers, weren't you?

A. Yes, sir. 20

Q. And Mr. Carroll was the other appraiser?

A. Yes, sir.

Q. At the time you appraised the goods, at the time of the application for bankruptcy—have you the appraisal here?

A. I believe it was left here last night.

(Paper produced.)

Q. I show you Exhibit S. 3. Do you know whether that is a copy of the appraisal or not, Mr. Douglass? 30

A. I believe it to be.

Q. And you made the appraisal at the Haines

Company, you made the appraisement upon cost prices, didn't you?

A. Well, first an inventory was taken and then the appraisement made afterwards.

Q. Now on the question of farming implements you made the appraisement on the cost on what basis?

A. We first took the cost and then deducted on some lines of the implements, we took off twenty per cent., some thirty and in some cases as high as fifty per cent.

Q. Do you know what particular things that you deducted as high as fifty per cent., Mr. Douglass?

A. I couldn't say at the present time. We picked out goods which were particularly unsalable, would be hard to sell.

Q. And that was twenty, thirty and fifty from the cost price?

A. Yes.

Q. What per cent. would that be, do you know, 20 from the selling price?

A. Well, we generally added on from thirty-three and one-third to fifty per cent.

Q. Well, you say that is the actual value, it would be as high as sixty and seventy-five per cent. above your appraisement?

A. Yes.

Q. And you didn't place any value at all upon the dies and cuts that you used in your advertising and your catalogues, did you?

30 A. No, none whatever.

Q. And what was the appraised value of those as a going concern?

Mr. Sexton. He said he made no appraisement of them.

Mr. Peacock. Now I am asking if he knows the value of them as a going concern.

A. Well, they were worth anywhere around \$10,000.

Q. And as liquidating this concern you didn't place any value on them in your appraisalment?

A. No.

Q. Now about the catalogues and printing and mailing list, you didn't place any value at all upon those, did you? 10

A. No.

MISS KATHERINE E. BERRY, sworn for the state.

Direct Examination by Mr. Geran.

Q. Where do you live, Miss Berry? 20

A. Hammonton, New Jersey.

Q. Are you employed?

A. I am.

Q. By whom?

A. United Distributing Company.

Q. Did you work before you worked for them?

A. I did.

Q. For whom did you work?

A. Linwood Haines Limited of America. 30

Q. How long did you work for them?

A. One year and one month.

Q. When did you begin to work for them?

A. October 16, 1913.

Q. In what capacity were you working?

A. Bookkeeper.

Q. Was there any other bookkeeper besides you?

A. No, sir.

Q. As bookkeeper did you have full charge of the books?

A. I did not.

Q. Who else?

A. Mr. Roberts, the secretary.

Q. Did you have any talk with Mr. Haines, Linwood Haines, concerning the financial conditions of this
10 company prior to October 27, 1914?

A. Not really about the financial standing of the company. I did about the bills that were due.

Q. When did you have a talk with him about the bills that were due?

A. Well, in August or September or October, along there, bills were due. I would talk to him whenever any one would call me on the phone or any one would come in the office about them.

Q. What would you tell him?

20 A. That the firm, whatever firm it happened to be, had been talking to me about his bill and had asked that we settle or they would sue, or whatever it happened to have been that they told me.

Q. And can you fix any particular date for that?

A. Well, I know at one particular time about two weeks when I was there alone in the office there was—I am not positive, but I think it was about the first two weeks in October,—it may have been the last two weeks in September or the first two weeks in October, I am not
30 sure which—when Mr. Roberts wasn't there.

Q. And that was the time you had the conversation referred to?

A. It was more than any other time.

Q. And after the last two weeks in September or

the first two weeks in October did you have a conversation with Mr. Haines about the bills?

A. I don't recall any particular time until this 27th day of October.

Q. Do you know what the method of the Linwood Haines Company was concerning the terms or conditions for the purchase of the box of merchandise?

A. I do.

Q. What were the terms?

A. The terms were two per cent. ten days, or sometimes more, discount; or on the farming implements most of the dating was thirty or sixty days. Furniture was thirty days and groceries were cash.

Q. Were the groceries paid for according to the terms cash?

A. Yes, the groceries were paid for.

Q. And those items that were on the two per cent. for ten days, were they paid for?

A. They were when I first went there but during the last summer they were not.

Q. And how about the goods that were purchased on thirty and sixty days; were they paid for within the terms of the contract?

A. Well, some of them were and some of them were not.

Q. And have you in mind any particular classifications concerning which the creditors that you were delinquent with presented claims?

A. You mean you want the firm's names that we owed?

Q. No, the classifications, the line of goods.

A. Well, the groceries, as I say, we had to pay cash for because we couldn't get groceries unless we paid for them. The furniture and farming implements—the farming implements went the longest, the last bills, went

longer than the furniture did, because the dating was longer, and we let them run rather than let anything else run that was a good deal more pressing.

Q. Can you tell whether the company had cash with which to carry on its business about the latter part of October?

A. We had enough for our current expenses but we did not have enough to pay our bills.

10 Cross Examination.

By Mr. Peacock.

Q. What was your position with the company, Miss Berry?

A. Bookkeeper.

Q. And as bookkeeper did you have charge of looking into the financial condition of the company at different times?

20 A. Well, I didn't make the statements or anything but I had charge of the books.

Q. The question of the financial statement and the question of looking into the financial condition was in the hands of Mr. Roberts, wasn't it?

A. Yes, sir.

Q. As a matter of fact you haven't any knowledge or any information on which to base your knowledge as to what the condition of the company was as to paying its bills, have you?

30 A. I had all the knowledge right with me. I had the books.

Q. What the company received and what it owed?

A. Yes.

Q. You told Mr. Geran that you had sufficient funds on hand for current expenses but not for the pay-

ment of bills, about that time. You had the money which was due to the concern sufficient to pay those, didn't you?

A. Money that was due us?

Q. Due your company for different things.

A. Yes.

Q. Do you know or don't you know?

A. We had not.

Q. On what date do you say that you had not sufficient money to pay some bills? What date did you state that subsequent to October 27th? 10

A. That we did have money enough to pay our bills? Well, in the summer months, and October 27th we were short of funds.

Q. You helped make up the appraisement of the company, didn't you?

A. Yes.

Q. And who did you assist?

A. Mr. Douglass and Mr. Carroll and Mr. B. C. Haines.

Q. Making up the appraisement you know that 20 certain deductions of twenty, thirty and fifty per cent. upon the cost price of certain things were included in that appraisement?

A. Yes, I do that.

Q. And the dies and advertising matter and cuts and catalogues, had they been included along with what have been appraised, they would have paid the liabilities of the company, wouldn't they?

A. They were not included in the appraisement at all. 30

Q. I say had they been included in the appraisement they would have exceeded the liabilities, wouldn't they?

A. If they had been included in the inventory they would have.

Q. And from the information you received as bookkeeper you would not say that on October 27th Linwood Haines was insolvent, would you?

A. No, I would not.

Q. And would say that they were solvent, wouldn't you?

A. Yes.

Q. Now you heard Mr. Davis testify yesterday, didn't you?

10 A. I did.

Q. In regard to the question of good will, of \$700,000?

A. Yes.

Q. Do you know whether or not that was a mistake on his part?

A. Yes, it was.

Q. What was the good will appraised at?

A. The good will was \$100,000.

Q. \$100,000 instead of \$700,000, as testified by
20 Mr. Davis?

A. Yes, sir.

Redirect Examination.

By Mr. Geran.

Q. Do you know how much stock of this company had been sold?

A. No, I do not.

30 Q. Do you know about how much had been sold?

Mr. Reilly. I object.

Mr. Geran. Approximately.

Mr. Reilly. As leading to an indefinite answer.

The Court. You may ask the witness whether she is in possession of any knowledge as to the sale of stock, ascertain what her knowledge is.

Q. Do you know, have you any information as to the sale of the stock of this company?

A. I have.

Q. Do you know approximately how much stock had been sold prior to October 27, 1914? 10

A. The total?

Q. Yes.

A. About \$225,000.

Q. You said on your cross-examination that had there been included in the inventory the dies and advertising matter, etc., that the assets of the company would have been greater than the liabilities; is that so?

A. Yes, sir.

Q. Do you mean by that that the assets of the company would have been greater than the bills payable? 20

Mr. Reilly. I object. It is not in the proper form. He is cross-examining his own witness.

The Court. Well, I don't know that he is cross-examining. You may reform your question.

Q. What did you mean by saying that if those items had been included that the company was solvent? 30

A. Well, the dies and cuts, etc., had a value but they were not included in the inventory at all, neither was the mailing list, and if they had been included the total amount of the inventory would have exceeded the liabilities.

Q. In your statement that these assets would have exceeded the liabilities are you or are you not taking into consideration the capital stock issued as a liability?

A. I am not.

Mr. Geran. The allegation in the affidavit is on the 26th day of October.

The Court. You mean in the indictment?

10

Mr. Geran. In the indictment, that on the 26th day of October 1914, the false pretences were made. Now the evidence is that the check was given on the 27th. The receipts are dated the 26th. So to avoid any possible confusion I move to amend the indictment to the date of the 27th, to correspond with the evidence.

Mr. Reilly. Your honor will enter our objection.

20

The Court. The objection will be noted. The amendment will be allowed.

(Objection noted for defendant as ground of appeal.)

STATE RESTS.

30

Mr. Reilly. If the court please, we move for the direction of a verdict. Such law as we find in the state governing cases of this kind may be had in 29 Law 13.

(Cites further authorities.)

The authorities, if your Honor please, seem to hold that the proof in a case of this kind must be strict, and that the state, failing in due proof of any material allegation in the indictment, must fail. The state must prove¹⁰ first that the accused represented that certain facts existed. Now we have the testimony of Mr. and Mrs. Blatchley, husband and wife, close relationship existing between them, that certain representations were made.

In the second place it must be proved that such representations caused the owner to part with his property. Now I challenge the state to show by a single scintilla of proof in this case that Blatchley parted with his \$100 on the 26th or the 27th of October by reason of any representations that were made by Linwood Haines upon²⁰ the date that he purchased that stock. He did not say that it was by reason of any representation that Haines made, and the facts in the case as adduced by the state show quite to the contrary. He and his wife on the 23rd went down to Camden and looked over this plant. He was already in the possession of stock of this company which he had purchased. He had \$100 worth purchased long prior. I say long prior. I don't know the date, but I am justified in using that term; anyway it was prior to the date that he went down to inspect the plant. Now³⁰ what did he go for? He and his wife, it is true, I think, did not go as far as honest people might in telling just what they did do; but can your Honor entertain a shadow of doubt but that they inspected those plants from cellar to garret? And then Mrs. Blatchley does not deny,

neither him, for that matter, that they were impressed with what they saw.

Another thing about the entire testimony of the two, it is vague, it is indefinite. Such things as that, if your Honor please, as they choose to remember for the purposes of this case, they have very, very vivid recollections of. Other matters they seek the coward's refuge, "I don't remember," "I don't recollect," "I don't know."

10 So that I think that I am justified in saying, if your Honor please, at this stage of the case that you are justified to looking into the accuracy or the inaccuracy of the testimony which was delivered by Blatchley and his wife.

Blatchley himself confesses that he is using this court for commercial purposes; he admits under oath that had he not lost \$100 in this way he never would have started the machinery of the law against Haines; all that he wanted was his \$100. Why not, if your Honor please, resort to civil proceedings if he thought that he was right? He could have had his action for deceit if he was right.

20 But here he makes a commercial agency of the grand jury and of this court and attempts to of this petit jury. So much for the second point and as to the representations.

In the next place it must be shown that the statements made were untrue. Now have they shown that these statements, if they were made by Linwood Haines, were untrue statements? Now upon the 26th of October—and you have the statement of the state's witnesses in the person of Miss Berry and in the person of Mr. Davis, who state at that time that this concern was a solvent and

30 a growing concern. That is the testimony of the state's witnesses. Now then if that is so, and it is testified to by witnesses who gleaned their knowledge long after—a week or ten days or more, and in one case I think the 13th of November, the other the 8th—gleaned after this concern had gotten in the hands of the wolves—and I

think it is a proper title to address them as, after rapacious lawyers had gotten hold of it for the purpose of serving their own ends, if they come here as state's witnesses and testify that at the time of this sale that concern was solvent and even afterwards, how can it be said that if the representations made by Linwood Haines were made by him that he knew them to be untrue? You cannot infer guilt, if your Honor please; you may in a divorce case but you cannot in a criminal case infer guilt. There must be positive proof, and I challenge the state¹⁰ again to show where by one iota of testimony it shows that Linwood Haines knew that the statements that he was making were untrue. Now if Linwood Haines believed, if he did make those statements, that they were true statements, where comes in the false pretence?

Furthermore, there must be an intent to defraud. It is true that you may gather a man's intent from his acts; but what acts or speeches have there been testified to here today calculated to show that Linwood Haines had the least intent to defraud? There he was in the²⁰ Blatchley home for two hours, discussing the pros and cons and the whys and wherefores of this business. Is it fair, if your Honor please, to assume that all that Mrs. Blatchley and Mr. Blatchley testified to as having occurred there is true and that nothing else occurred? These people confine themselves to just that which will subserve their interests and no more. How have they shown that in any of his conversations or in any of his actions he intended to deceive or intended to defraud? Have they shown that this check of \$100 that was given³⁰ did not go just where it was intended to go? Have they shown that Linwood Haines had diverted that \$100? The check itself is silent evidence; it shows that it was handed right over to the concern to which it was payable, the Linwood Haines Company, endorsed by it, and sent

through various channels and banks until it finally got here and was paid. Have they shown that one dollar of that money came to Linwood Haines? Suppose that he was president of this concern. Was he anything more than an agent selling its stock, working for the good of all?

It has come out in testimony here that his father was a stockholder to the extent of several thousands of dollars; all of which goes to show an honesty of purpose
10 that actuated Linwood Haines when he went to these people as those that he was interested in as stockholders, the same as he went to others, several hundreds of others, and sold his stock. Yet we come down here to Mr. Blatchley as the only person of twenty-five individual stockholders who starts a prosecution and attempts to make this court and our grand jury a commercial agency for the purpose of collecting his bills. Have they shown that they placed any reliance upon what he said on the 26th? They were perfectly satisfied from an inspection
20 that they made upon the 23rd. Mrs. Blatchley was forced to confess that in the slight conversation that she admitted she had with her husband she was impressed with her inspection of the plant.

Now then, where have they proven that there was an actual defrauding? Here was a concern going along, this man as the president of it, doing the best that he could, working for the good of all; and it has been intimated by the testimony here that there was some disgruntlement upon the part of some of the stockholders.
30 They called a meeting, the disgruntled ones; and at the meeting there was an attendance that Blatchley says was three or four hundred. I think Blatchley said there were three or four hundred stockholders there. Another man, Davis, I think it was, said there were probably fifty. Finally it comes down to Mr. Douglass, who said there

were fifteen stockholders there. But everybody agrees that there were a lot of lawyers there, who exercised their rapacity for the purpose of filling their pockets. I might do the same thing myself if I were interested in the accumulation of fees, but, thank God, I am not so inclined.

Now that is the situation. The lawyers got hold of it and on the 19th day, if I remember correctly Mr. Davis' testimony, of November, when he took hold of that concern as receiver in bankruptcy, he testifies that that concern was then a solvent concern. Now the language of your indictment is that Haines misrepresented that it was in a sound financial condition. The State from the mouths of its own witnesses has proved that it was in a sound financial condition, paid cash for all goods purchased by it at wholesale. The witnesses testify here—I don't know much about trade customs, but the witnesses testify here that thirty days, ten days, sixty days, even, on some goods, is regarded as a cash transaction; and that that was the method adopted by that concern. It 20 does not follow, if your Honor please, reasoning any different, that because a merchant who has bought for cash at sixty days, of course he didn't get his discount, but a merchant who had bought on cash for sixty days and is unable on account of the vicissitudes of trade and on account of the strength of competition incident to the trade in the town in which he conducts his little place, being unable at sixty days to pay his bills, has not bought for cash. That is the testimony in the case. Next, was solvent. This is the representation. Isn't the state's proof 30 to the effect that it was solvent upon the date alleged in the indictment?

Now then comes the negative part: "Whereas in truth and in fact the said Linwood Haines Limited of Camden was not in a safe and sound financial condition."

Where is the truth that it was not? Even if the allegation was made where is the proof before this court that it was not in a sound financial condition? Suppose that he did make that statement and believed that it was true, what proof is there before the court that that was not his belief, or how has it been shown that he would entertain a contrary belief that it was in a sound financial condition?

10 “Had not paid cash for the goods purchased by it at wholesale.” The proof in this case is quite to the contrary. If the witnesses who seem to be conversant with trade customs had testified that they bought at ten and thirty and sixty days, that that is regarded as cash, if he made the statement why was it not true? What is false about it? Why it seems to us, if your Honor please, as if the State had proven the defendant’s case. It has demonstrated by its proof his innocence of the charge laid in this indictment.

20 Next we have the statement in the indictment that “its shares of stock were then and there a safe and sound investment.” And take that statement, if he believed it to be true where is he defrauded? What attempt has been made before this court to show that he would have a contrary belief than that it was true? His father in for \$3,000, every dollar that he had in the world placed there; he working for a salary himself, for the good of all; how can they say that he did not believe in the representations that are laid in this indictment and in the testimony as the statements made by the Blatchleys?

30 How has the State proven that he did not believe those statements to be true or that he had reason to doubt their truth?

We submit, if your Honor please, that the State has utterly failed, that this is not a case for a jury. It would be an insult to the intelligence of the court to com-

ment upon the rule and to comment upon the discretion which is inherent in the court on a motion of this kind. But we do earnestly, if your Honor please, insist that there is not that evidence in this case which will warrant the court in the exercise of its reasonable discretion in permitting this case to go to the jury.

The Court. I will hear what the State has to say.

(Mr. Sexton replies.)

10

The Court. In view of the fact that the court does no intend to continue this case the balance of the day, and the matter is of sufficient importance to require the court to examine the authorities offered, the decision is reserved until Tuesday morning at 9.30.

(Adjourned till Tuesday, February 29, 1916, at 20
9.30 A. M.)

Freehold, N. J., February 29, 1916.

(Trial of the cause resumed at 9.30 A. M.)

The Court. At the session of this case on Friday a motion was made to direct the jury to acquit. The court
10 conceives that the State has made a prima facie case and that the granting of the motion would be a usurpation on the part of the court in a matter in which the jury should exercise the necessary functions belonging to it. Therefore the motion is denied. You may have an exception.

(Objection noted for defendant as ground of appeal.)

Mr. Reilly. If the court please, may I ask the
20 Prosecutor upon which section of the statute he relies, 186 or 186 a?

Mr. Sexton. I insist that the 186 a, requiring the statement to be in writing—of course there is no writing here.

Mr. Reilly. I simply ask you upon which section you rely?

30 Mr. Sexton. 186.

Mr. Reilly. Then you rely upon the 186th section?

Mr. Sexton. Yes.

Mr. Reilly. Now, if your Honor please, under the indictment there are three specific charges made, upon either of which the court might rely. The first pretence as alleged in the indictment was a representation to Blatchley that a certain business concern known as Linwood Haines Company of Camden, Incorporated, was in sound financial condition. Now that is one charge. "Paid cash for all the goods purchased by it at wholesale." There is another charge.

"Was solvent and its shares of stock were then and there a sound investment." Now there are three distinct charges, either of which might be a false pretence, and I think it but fair that the Prosecutor elect upon which charge he will ask for a conviction. 10

The Court. I think the suggestion is proper, Mr. Sexton.

Mr. Sexton. Well, with due deference to the court I do not. 20

The Court. I mean I will hear you on it.

Mr. Sexton. In the action for obtaining money under false pretences it is not the pretences at all, it is the getting of the money. Now right in this case we have an objection that was made because the pretence was made beyond the period of the statute of limitations, but the money was received within two years. 30

The Court. But that is not the point. Mr. Reilly desires to know upon which allegation of the indictment you intend to rely.

Mr. Reilly. I want to state now that under my theory of it I am going to put the whole business?

The Court. Very well then, you will rely upon all?

Mr. Sexton. Yes, certainly; because I conceive the crime itself is getting the money, no matter what he said. He may have talked for a week, but the representation is the reason and means by which he got the money.

10

Mr. Reilly. If your Honor please, he must have got the money upon some pretence. Now one pretence laid is that this company was solvent. It had been demonstrated in this case that at the time he got the money it was in a solvent condition.

The Court. Well, that is a question for the jury, Mr. Reilly. It is not a question for me to determine.

20 Mr. Reilly. Now, if your Honor please, the jury can only go according to the facts, and here are three witnesses of the state who testify to that fact.

The Court. I shall define to the jury the legal definition of solvency. Of course I am not obliged to do that now.

Mr. Reilly. Certainly not.

30 The Court. Now under the law as to false pretence it is not necessary that Blatchley should have been influenced by any particular pretence, if any one of them contributed to the inducement.

Mr. Reilly. In short, if any one induced it?

The Court. Yes, that is the law upon the subject. Now the Prosecutor states that he intends to rely upon all the allegations of the indictment. I assume that he intends to argue to the jury that the complaining witness was influenced by these several allegations in the indictment and it is for the jury to determine which one, or whether all of them, if they should find that they were false pretences. They cannot merely take that as a naked declaration that they were false pretences.

10

Mr. Reilly. But, if your Honor please, if the company was solvent at the time there is no untruth upon the part of this defendant.

The Court. That is a matter for you to argue to the jury under the proper definition of what solvency means in the criminal law of this state.

Mr. Reilly. It cannot be a false pretence unless it was false in fact.

20

The Court. Yes, I agree with you. Now that is for the jury to determine.

Mr. Reilly. I understand your Honor overrules the objection?

The Court. Well, there is really nothing before the court. You have requested the Prosecutor to elect. Now I suggested to the Prosecutor that he elect. He says that he elects to stand upon the indictment as drawn.

30

Mr. Reilly. All right, sir. I suppose that does. If the court please, it is in evidence here by three witnesses upon the part of the State that at the time of

the alleged offence this corporation was in a solvent condition. I now move that the allegation of insolvency at the time of the alleged pretence as shown in the indictment be stricken out, or that the jury be directed by your Honor to acquit upon that specific allegation.

The Court. The motion is denied.

10 (Objection noted for defendant as ground of appeal.)

Mr. Reilly. Now as to the allegation contained in the indictment that the corporation was then, that is, on the 26th or 27th of October, 1914, in a sound financial condition, the jury be directed to acquit upon that allegation.

The Court. The motion is denied.

20 (Objection noted for defendant as ground of appeal.)

Mr. Reilly. As to the third allegation, that the corporation paid cash for all the goods purchased by it at wholesale, in view of the testimony produced by the State, that the goods were bought at ten, thirty and sixty days, and that the trades custom considered that cash, the State has not borne the burden in reference to that allegation, and that the jury be directed to acquit upon
30 that charge.

The Court. The motion is denied.

(Objection noted for defendant as ground of appeal.)

Mr. Reilly. As to the fourth allegation—and upon the further ground, if your Honor please, as to the third allegation, it might be regarded in law and in the trade as mere puffing.

The Court. Oh, no, I don't agree with you. Your definition of puffing, that is, if you apply it to that particular thing, and my definition are different.

Mr. Reilly. I think I am within the law, I mean the 10 legal definition. I am not giving you my own. Now as to the next allegation, that the corporation was solvent and that its shares of stock were then and there a safe and sound investment, that such statement upon the part of the defendant was in the nature of puffing.

The Court. Rather an expression of opinion, is that what you mean to say?

Mr. Reilly. Yes; and was not such inducement as 20 is contemplated by the law under the evidence in this case, and that the evidence in the case upon the part of the State clearly establishes the fact that at the time the statement was made it was true.

The Court. The difficulty with the proposition is that you are requesting the court now to declare as a fact that that is true, whereas it is for the jury to determine whether it was a fact.

Mr. Reilly. I simply want the court to declare 30 under the evidence.

The Court. The motion is denied.

(Objection noted for defendant as ground of appeal.)

DEFENDANT'S TESTIMONY.

LINWOOD HAINES, sworn for defendant.

Direct Examination by Mr. Peacock.

- 10 Q. Where do you reside, Mr. Haines?
A. Camden, New Jersey.
Q. How old are you?
A. January 20th of this year, thirty-four years old.
Q. How long have you resided in Camden?
A. All my life.
Q. And what has been your business?
A. Well, advertising, mail order and representing
bankers in the sale of securities.
Q. For how many years?
A. About fourteen years.
- 20 Q. Are you married or single?
A. Single.
Q. Live with your parents?
A. Yes.
Q. Were you a member of the company of Lin-
wood Haines Limited?
A. Yes.
Q. And what position or office if any did you hold
in that corporation?
A. I held the position of president and also treas-
30 urer.
Q. When was that corporation incorporated, Mr.
Haines?
A. It was incorporated in February of 1912.
Q. Under the laws of the State of New Jersey?
A. Under the laws of New Jersey.

Q. When did it open its business?

A. Well, it was really under way for a period of two months prior to its incorporation; that is, during the organization period.

Q. And under what name?

A. Under the name of Linwood Haines Limited of America.

Q. Where was the main business place?

A. The first location of the company was at 39 and 41 Market Street, Camden. 10

Q. Any branch offices or branch stores?

A. At that time none.

Q. Later on did it develop that you had other stores?

A. Our business was a gradual growth; due to the fact that the Victor Talking Machine Company secured the lots for our store we were forced to move to 95 Federal Street.

Q. How many places of business did you have then? 20

A. We had three additional buildings.

Q. And your main place of business the same as before, 39 and 41?

A. The same as before.

Q. Who were the officers of the company?

A. In addition to myself my father was vice president, Mr. Roberts was secretary, G. Horace Roberts; Mr. Cabell Truman, head of the advertising department and director, Mr. H. C. Pruden, the head of the furniture department, was a director. 30

Q. What was the authorized capitalization?

A. The total capitalization under the laws of New Jersey was \$500,000, divided into preferred and common.

Q. How much paid up capital was stock which you began business with?

A. If I recall rightly I think it was to comply with the law, \$1,000.

Q. How much stock was issued by the company, paid in?

A. You refer to the Jersey company?

Q. Yes.

A. If I understand your question we sold the entire issue of preferred stock, \$125,000. That was outstanding at the time.

10 Q. Was that all the stock that had been sold by the company?

A. Yes.

Q. Was there any stock sold which had not been paid for?

A. Well, we always carried subscriptions on the installment plan.

Q. How was this stock sold to subscribers?

A. The preferred stock, the par value of a share of the company was \$10. It was sold at par and it was
20 accompanied by a bonus of one share of common stock for each share of preferred.

Q. And what advantages did the stockholder receive from your corporation?

A. The stockholder received a discount of five per cent. on all merchandise purchased by the company.

Q. And how was that merchandise sold?

A. Sold for cash.

Q. Sold for cash?

A. Cash to the customer.

30 Q. Did the stockholder receive an advantage over a non-stockholder by getting a discount?

A. That was one of the advantages of being a stockholder.

Q. And what was the value of the merchandise with which you began business?

A. Well, that would be pretty hard to estimate. We began—

Q. Approximately.

A. I was going to explain, we began in a very, very small way and our merchandise was acquired as we went along.

Q. What was the value when you first opened?

A. I should presume approximately \$2,000 or \$3,000.

Q. What was the yearly increase of that merchandise, that is, in the value of it? 10

A. Well, I might say our business, the merchandise on hand was a constantly increasing ratio. It would be pretty hard to approximate what the yearly increase was.

Q. Can you approximate it?

A. Well, based on what we had at the time of the receivership I should presume the increase was between \$10,000 and \$15,000 a year.

Q. Now at the time of the receivership what was the value of the merchandise on hand of your company? 20

A. The last inventory of the company was taken on July 31st and that is the only way to determine.

By Mr. Reilly.

Q. 1914?

A. 1914, yes; and that was the only way to tell the exact amount of merchandise we had on hand. But from the monthly statements presented to me by the accounting department I estimated our merchandise on hand at that time at about \$30,000. 30

By Mr. Sexton.

Q. When, July 31st?

A. No, I have based my judgment on that—at the time of the receivership, yes.

By Mr. Peacock.

Q. You say the last inventory that was made was
10 made July 31, 1914?

A. Yes.

Q. Who made that inventory, do you know?

A. Why, each department head made his own inventory.

Q. Were these figures given to you by the department heads?

A. No, they were presented to our accounting department.

Q. But were they finally given to you as the whole
20 of the inventory?

A. They were finally given to me in the shape of a financial statement.

Q. Can you tell us what that financial statement was without refreshing your memory from the statement?

A. The financial statement as presented to me showed we had between \$38,000 and \$40,000 of assets in excess of our liabilities.

Q. Do you remember what the liabilities were at
30 that time?

A. The liabilities were totaled about \$22,000.

Q. Do you remember what the total amount of assets was?

A. I think in the neighborhood of \$60,000.

Q. And what did that compose, if you know?

A. We disregarded any good will and the statement composed the items of teams, merchandise on hand, office fixtures, cuts and art work, subscriptions due, or that is, unpaid balances upon subscriptions due us, and printed matter on hand.

Q. Anything else?

A. I can't recall from my memory any additional items.

Q. From that inventory can you tell us in your memory what was the amount of merchandise you had 10 on hand in your store at that time?

Mr. Sexton. Referring to the time of the receivership?

Mr. Peacock. Referring to the statement of July 31, 1914, the last inventory taken of his company.

A. I think in the neighborhood of \$24,000.

Q. \$24,000 for merchandise. What was the 20 amount of accounts receivable that were due your company at that time?

A. About \$7,000.

Q. Do you know the inventory or appraisement of the horses and wagons and trucks?

A. I think \$1,800.

Q. For unexpired insurance?

A. That I cannot give you the exact amount. That was computed by our accounting department, but that was in as an item. 30

Q. Furniture and fixtures of the concern?

A. Yes, sir; there were furniture and fixtures in the statement.

Q. What were they inventoried at?

A. I think in the neighborhood of \$8,000.

Q. Printed matter, catalogues and so forth, do you know what that was inventoried at?

A. About \$4,000. I guess \$3,000 would cover that.

Q. This inventory was made under your direction?

A. The inventory was made by my request to our accounting department.

Q. And the inventory was made under your direction or figures furnished to you; is that correct?

10 A. That was right

Q. Was that the inventory that was furnished you by the heads of your departments as of July 31, 1914?

(Paper shown witness.)

A. It was.

Q. And was that the correct and true statement of the financial condition of your company on that date?

A. I have every reason to believe so.

20 Q. And was that inventory and financial statement read at the stockholders' meeting just subsequent to that date by you or any one in your employ?

A. Are you speaking of the July 31st meeting or the one called later at the Y. M. C. A.?

Q. The July 31st meeting.

A. July 31st, yes; the report was presented at that meeting.

30 Q. Now at the meeting of the stockholders at the Y. M. C. A. before the receivership was this statement read at that time?

A. Yes, sir.

Q. By whom?

A. By myself.

Q. And when was that meeting of the stockholders in the Y. M. C. A., at Camden, do you know?

A. On October 18th, 1914.

Q. And this statement was read at that time?

A. Yes.

Q. And this was the last inventory made of your concern, is that right?

A. It was.

Mr. Peacock. I offer it in evidence.

Mr. Sexton. I object to it.

10

Mr. Peacock. He has used it to refresh his memory and all he knows—

Mr. Reilly. May I at this time obviate any argument by asking that it be marked for identification?

(Paper marked Exhibit B for Identification.)

Q. At the stockholders' meeting at the Y. M. C. 20
A. in Camden you were present at that time, were you?

A. I called the meeting and I was, of course, chairman.

Q. For what purpose was the meeting called, do you know?

A. The meeting was called for the purpose of acquainting all the stockholders with the fact that at a prior meeting of a very few stockholders the credit of the company was being impaired.

Q. In what way?

30

A. By the news getting out that at this minority meeting, or rather a meeting not called by myself, that those stockholders voted immediately to ask for a receivership, and that got out to the general hands of the public.

Q. You say there was a meeting called by some

stockholders at which you were not present or it was not called at your direction?

A. I have every reason to believe that it was called by a former employee of the company who had failed to make good.

Mr. Sexton. I object to what he believes, unless he knows.

10 The Court. Counsel is not insisting upon the question, I suppose, are you?

Q. Do you know of your own knowledge who called the meeting, that is, what you can testify to?

A. I did not call that meeting.

Q. Do you know that the receivership was based upon an application by persons who attended that meeting? Do you know that to be a fact and do you know who did call the meeting?

20 A. I can't say that I positively do know who did call the meeting.

Q. Do you know what the purpose of that meeting was?

A. It was evidently malice.

Mr. Sexton. I object unless he knows.

The Court. Yes, strike it out.

30 Mr. Reilly. Yes, or no.

Q. You will have to answer that yes or no.

A. No.

Q. You don't know?

A. I don't know.

Q. Do you know whether or not the persons who attended that meeting were later the persons who made the application for the receivership of the Linwood Haines Limited Company?

A. I do know that.

Q. You do know that?

A. Yes.

Q. Were they the people that you described that were dissatisfied stockholders or dissenting stockholders?

A. I would describe them that way. 10

Q. And this meeting, on what day did you say it was, in the Y. M. C. A.?

A. It was held on the 18th day of October, 1914.

Q. Did you make a statement that day?

A. I did.

Q. And what did that comprise?

A. The statement comprised a lengthy resume of the entire projects of the company during the past year and also it presented a plan for immediately liquidating some of the liabilities of the company. 20

Q. And what was that plan?

A. The plan was this: each stockholder present was asked to subscribe to a certain amount of merchandise, for the purchase of a certain amount of merchandise, and such merchandise was not to be delivered within six months. It practically was a loan, it bearing six per cent. interest. I suggested that if the stockholders as a general body would subscribe only ten per cent. of their holdings that would net us a sum to liquidate nearly all our liabilities; but providing that certain stockholders would be unable to make such subscriptions I suggested that each stockholder would subscribe twenty per cent. of his total holdings. 30

Q. Did you make any statement as to the liabilities or assets at that meeting?

A. Nothing further than is set forth in the report of July 31st.

Q. In what report?

A. In the July 31st report.

Q. The inventory report?

A. Yes, sir.

Q. And the statement, you say, was mainly a question of the rehabilitation of the company?

A. I would say that.

10 Q. You know Mr. Blatchley, do you?

A. I do.

Q. When was the first time you ever saw him?

A. Eleven o'clock on the morning of the 23rd day of October, 1914.

Q. Where was that?

A. It was on the second floor of our building in front of my private office.

Q. Who was present with Mr. Blatchley?

A. Mrs. Blatchley, Mrs. George Blatchley, Jr., Mr.
20 and Mrs. Isaac Vanderveer, Mr. and Mrs. Charles Applegate, Howard Jones and Frank Jones and Mrs. John Drum.

Q. And what were they doing at your store at that time?

A. They had accepted our invitation to come to the company and inspect its plant, merchandise and general condition, and as an inducement we agreed to pay the railroad fare of each member of the Freehold committee, as well as one other member of the family, and on
30 such purchases of merchandise as they made for that one day only we gave them ten per cent. discount.

Q. Mr. Blatchley was then a stockholder of your concern, wasn't he?

A. He was.

Q. Did you have a conversation with him that day?

A. Considerable conversation.

Q. In regard to what?

A. Well, on the apparent appearance of the place. He also agreed practically to do everything he could to advance the company's interests.

Q. Did he talk about the business of the concern? Did he make an inspection of the plant?

A. I did my very best to take him from one end of the plant to the other.

Q. Well, did you do that?

10

A. I did do that.

Q. What conversation did you have about the business of the plant?

A. Well, the conversation was general.

Q. Did he visit all the stores of the plant?

A. To the best of my belief and knowledge he was in every building.

(Objected to.)

20

Q. Do you know whether he was or not?

A. I do.

Q. How many of the stores did he visit, do you know?

A. The first building he visited was our general offices of Federal Street and then he was taken over across the street to the grocery and furniture department and finally through the agricultural building. I was present at the time they made the inspection.

Q. Did he express himself at that time—

30

(Objected to.)

The Court. Let him finish it.

Mr. Sexton. It is a leading question.

Q. Did he make any expression at that time as to his satisfaction or dissatisfaction with the company?

A. He expressed himself—

Mr. Reilly. Answer the direct question, yes or no.

A. Yes.

10

Mr. Reilly. What did he say?

Q. What did he say?

A. He said that apparently everything was satisfactory; and I said, "No doubt I will be down in your neighborhood in a very short time," and he extended a hearty welcome.

Q. Did you tell him what you would come down to his neighborhood for?

20 A. At the time of the meeting in Camden?

Q. Yes.

A. I didn't say what it would be for.

Q. Did you have any conversation with him concerning the plant at that time?

A. He took me aside and suggested that certain members of the party might be good customers for the concern.

Q. Did he say that he would recommend them as customers?

30 A. I don't know as he said particularly at that meeting that he would do so.

Q. Well, did he say that he would recommend the plant to customers as a sound investment?

A. No, sir.

Q. Did he say anything concerning his recommendation of the concern?

A. Not at that particular meeting.

Q. Well, when did he say that?

A. At his residence.

Q. And when was that?

A. That was when I visited him upon the 26th day of October, 1914.

Q. How long were they at your plant in Camden, this party? 10

A. From eleven o'clock in the morning till three in the afternoon.

Q. When did you next see Mr. Blatchley?

A. On the 26th of October, 1914.

Q. And where was that?

A. At his residence.

Q. And who was present with you at his residence?

A. Mr. Blatchley, Mrs. Blatchley, myself and our representative in that territory, Mr. John H. Richardson. 20

Q. And for what purpose did you see Mr. Blatchley at his home? What happened there?

A. That last question?

The Court. There were two questions.

Q. I will withdraw that first question and ask you what happened at the Blatchley home?

A. We were received very cordially in the parlor. The conversation at first was very largely upon the recent trip and the apparent satisfaction of the inspection. 30

Q. Who said that?

A. Mr. Blatchley.

Q. Well, what did he say? That is what we want to know.

A. Well, he said that so far as he could see apparently everything was all right.

Q. Go on, tell us the rest of it.

A. The conversation was practically a resume of the talk that Mr. Richardson evidently had given to Mr. Blatchley and was this : that during the past summer, due to the fact that a large number of our stockholders were farmers and that they became engaged in the fields from the planting of seed till the harvest, they were ignoring the company in the way of sending in orders; and we proposed to secure if possible not only large mail orders in the spring and fall, but the orders for small merchandise in between seasons; and as an experiment we proposed as soon as sufficient business would warrant in any particular territory to locate what we called a branch distributing station. Now from this station the local stockholders and customers could secure all the
10 articles in constant need. Now if that of course did not produce a success we proposed to abandon that. Now in order to further aid us in our work we proposed to organize what we called a founders' committee for various selected territory. Freehold was one of them. The plan was to secure twenty-five members to a founders committee. Each subscriber was permitted to subscribe to twenty \$5 shares of preferred stock, making a total par value of \$100 at par. Instead of the usual bonus the subscribers who were not members of the committee,
20 with one one hundred per cent or one share, with each share of preferred stock purchased these founders were to receive a still further inducement in the way of two shares of common stock free.

Q. Who was present during this conversation?

A. During the fore part of the conversation, I
30

should judge for about an hour, Mrs. Blatchley was present. Now Mrs. Blatchley testified that she was present—

Q. Never mind about what Mrs. Blatchley testified to. Did Mrs. Blatchley stay there during the entire conversation?

A. Mrs. Blatchley retired to the rear of the house.

Q. How long was she absent, do you know?

A. Well, possibly for fifteen or twenty minutes. She was going backwards and forwards. The house was 10 open and I could see through from one end to the other.

Q. And that left you and Blatchley and Richardson present?

A. For a short time.

Q. Did you retire any time?

A. When Mr. Blatchley said that he would subscribe for \$100 worth of stock he apparently retired to the dining-room and had a consultation with his wife, and they were evidently looking up the checkbook. I told Mr. Richardson to make out the receipt and the forms 20 and to excuse me, I would be back in a moment, and I stepped out for possibly ten minutes.

Q. Any time during the conversation with Blatchley did you tell him anything about the financial condition of the company?

A. Mr. Blatchley asked no question about the financial condition of the company and we did not discuss them.

Q. Was anything said concerning the purchasing at wholesale, goods for cash? 30

A. Nothing except in the general statement. At the time Mrs. Blatchley was present my statement was this : that mail order houses are known as cash buyers; whenever a manufacturer has a certain lot of merchandise upon hand that he wishes to sell quickly, as a rule he

first approaches the buyers of a mail order house, because he knows that he will receive immediate funds for such purchase. But that statement at that time was general.

Q. Did you at that time tell them that you purchased for cash at wholesale, except what you have just stated?

A. I did not.

Q. What was said about the safety of the investment in your mail order business if anything?

10 A. I said that to the best of my knowledge and belief that no large general mail order house had ever failed. I said further that there may have been failures among individuals who embarked in the mail order business without capital or without experience; but where a house earned the right to be considered a real mail order house I knew of failure, which was largely attributable to the fact that the a mail order house sold exclusively for cash and therefore had no losses.

Q. How did your company buy goods?

20 A. Our company bought in three ways—and I might right here define my notion of cash buying.

Mr. Sexton. We don't want it.

Mr. Reilly. We will ask for that latter.

Q. How did you buy?

A. We bought for cash. At what period, I might say?

30 Q. What do you mean by that?

A. On many of our bills we received a cash discount of ten days.

Q. You said you bought goods in three ways. Now what do you mean by that and what were the three ways?

A. Cash in advance, spot cash and where we purchased goods on ten, thirty and sixty days, and in some extreme cases ninety days, where the cash discount was given to the fullest extent. I consider all of those cash buying.

Q. Why, why did you consider them cash buying?

A. Well, it was the usual trade custom.

Q. And is that known as cash in the usual trade custom?

A. I always considered it so from experience. 10

Q. And you were buying in that way at the time of Mr. Blatchley's purchase of this stock, weren't you?

A. We were.

Q. And you considered it such at that time?

A. I considered it such.

Q. Did you talk anything else concerning the question of a safe and sound investment with Mr. Blatchley? Did you tell him that it was a safe and sound investment, purchasing the shares of your stock?

A. I did not, referring to our own company, make 20 any such statement.

Q. What statement did you make? Were you asked that?

A. I was not asked that question.

Q. Did Mrs. Blatchley at any time ask you if this was a safe and sound investment?

A. I will say that Mrs. Blatchley asked that question.

Q. Well, what did you say in reply to that?

A. I said that to the best of my knowledge and 30 belief no mail order house had ever failed and I didn't consider that our house would be the first.

Q. Was anything else said by you in regard to being a safe and sound investment?

A. I don't recall anything else.

Q. Is that all the conversation that took place between Mr. and Mrs. Blatchley and yourself on that subject?

A. I believe so.

Q. Was anything asked you concerning the question of assets or liabilities of your company?

A. No question was asked about our assets or our liabilities.

Q. Was anything said by you concerning that?

10 A. Nothing was said.

Q. Had you any knowledge or information at that time or at any other time that an application for receivership was going to be made by certain stockholders of your company?

A. I had no indication whatever of that or any feeling. It came like a bolt out of a clear sky when the receiver stepped in on the 19th day of October.

Q. Did Mr. Blatchley say anything to you at that time concerning his trip to Camden, as to what he thought
20 of the condition of the plant as an investment, as to his personal observation of the concern?

A. As far as I can recall he said that it was absolutely satisfactory.

Q. How long a conversation did you have with him at that time?

A. With Mr. Blatchley?

A. Yes.

A. I should say the conversation extended over a period altogether of an hour and a half.

30 Q. Well, who took part in the conversation? Did Richardson take part in it?

A. Yes, he would, part of the conversation.

Q. Now how long did you say that you were out of the room?

A. About ten minutes.

Q. For what purpose did you go out?

A. Well, it was of a personal nature.

Q. Now at any time during that conversation did Mr. Blatchley give you a check for \$100?

A. He did not.

Q. At any time that day did you give him a receipt for \$100 for any stock purchased by him?

A. I did not.

Q. Do you know of your own knowledge who he did give the check to? 10

A. When I returned to the room Mr. Blatchley was holding the receipt and I believe a copy of the subscription, and Mr. Richardson was holding the check.

Q. Did Mr. Richardson give you the check at any time or what did he do with it, do you know?

A. As far as I can recall he turned it in at the office.

Q. Did Blatchley give you a check at any time for \$100?

A. I never handled the check.

Q. Did you give him a receipt at any time for 20 shares of stock in your company?

A. Personally no.

Q. Did you at any time handle any cash at all from Mr. Blatchley in consideration of the stock of your company?

A. I had no active hand in any of that transaction.

Q. What became of the check if you know?

A. From the accounting department I presume it was properly entered and acknowledgment sent, as was our usual custom in all such transactions. 30

Q. Was this check turned in to the company?

A. It evidently was.

Q. And did you get any portion of that check for your personal benefit?

A. Not a cent went to my personal benefit, no

more than it would to any other stockholder of the company.

Q. Then it was turned into the general assets of the company?

A. Positively.

Q. And the check was acknowledged by your company as a company to Mr. Blatchley; is that right?

A. Yes, sir.

Q. Was stock issued to Mr. Blatchley for that, do
10 you know?

A. It was properly entered on the books of the company and stock certificates were awaiting to go out at the time of the appointing of the receiver.

Q. And the stock certificate to Mr. Blatchley was in that batch of stock certificates to go out at the time the receiver was appointed?

A. I believe so.

Q. At the time the stock was sold to Blatchley on October 26th or 27th in your opinion was the Linwood
20 Haines Limited Company solvent or insolvent?

A. I never had any other idea but what it was solvent.

Q. You believed it to be solvent at that time; is that right?

A. To the fullest extent.

Q. Was it solvent?

A. I haven't had it proved to me that we were not solvent.

30 Mr. Reilly Can't you answer yes or no?

Q. In your opinion was it solvent then?

A. In my opinion it was solvent.

Q. At the time the receiver was appointed did you believe it to be solvent then?

A. I did.

Q. And if the inventory of the company as made by the receiver had included the stocks, dies and cuts and catalogues that were used by your company as a going concern would not the inventory have shown it at that time to have been a solvent concern?

A. Yes, with a very liberal margin.

Q. Were you a salaried employee of the concern?

A. I was.

Q. What other employees of the concern were there besides yourself? 10

A. Well, we had as high as fifty or sixty employees at a certain time.

Q. What do you know about the question of the goodwill of your company, Mr. Haines, that was testified by Mr. Davis?

A. At the discussion at the Y. M. C. A. in Camden the thought came up about the difference between the amount of physical assets on hand and the amount of stock outstanding; and estimating the assets roughly as \$40,000, the amount of preferred stock outstanding at \$140,000 will show an advance of \$100,000, and I said that the goodwill in my estimating was worth every cent of it. 20

Q. By reason of what? What did you estimate it at?

A. At \$100,000.

Q. Then it was estimated at \$100,000 instead of \$700,000 as testified by Mr. Davis; is that right? 30

A. That is true.

Q. Do you know how that error came about?

A. I really don't know, no.

Q. And at the meeting at the Y. M. C. A. of stockholders did you so state it then as you have stated it now?

A. I did.

Q. Why was not the stock sent out?

A. On July 31st, by a meeting of the stockholders called for that purpose, they ratified the formal action of the directors in agreeing to dispose of all the assets of the New Jersey Company, subject to its liabilities, to a company to be formed under the laws of the State of New Jersey and Delaware and to be named the Linwood Haines Limited of Camden Inc.

10 Q. What has that to do with the delivery of the stock? What bearing has it?

A. The point was that we required new stock certificates, which had to be engraved, and we had at that time, I think, about twelve hundred stockholders, and it was a vast amount of clerical work to prepare them. The stockholders had been duly informed that those stock certificates would be sent in course of time.

Q. Well, were the certificates ready to be sent out at the time of the receivership?

20 A. I believe so.

Q. And was that the reason that the certificate had not been sent to Mr. Blatchley?

A. For no other reason.

Q. Of the receiver being appointed?

A. That was the reason.

Q. How was the receiver appointed, if you know? How did he come to be appointed?

A. At the meeting at the Ridgway Hotel in Camden, held prior to the meeting I called at the Y. M. C. A.,
30 a resolution was made to apply for a receiver at once.

By Mr. Sexton.

Q. Were you there?

A. I was not. I was informed that.

(Objected to.)

The Court. The objection is sustained. He was not there.

By Mr. Peacock.

Q. You were not there?

A. I was not there.

Q. Well, do you know of your own knowledge ¹⁰
how the receiver came to be appointed?

A. Mr. Davis came to my office and stated that he had been—

(Objected to.)

Mr. Reilly. I think the objection—he can answer yes or no. I have tried to make that suggestion; if he knows he can say so.

The Court. Yes, I think he can answer it.

20

(Question repeated.)

Q. Well, do you know of your own knowledge?
Answer that yes or no.

A. Yes.

By Mr. Reilly.

30

Q. How?

A. Mr. Davis came to my office and said he had been—

Mr. Sexton. I object to what Mr. Davis said.

The Court. Why?

Mr. Sexton. Mr. Davis has been a witness in this case, and as he stated, that he was an attorney representing certain stockholders at the time.

Mr. Reilly. Was first receiver and is now the trustee.

10 The Court. I will permit the answer.

A. Mr. Davis came to my office and stated that he had been appointed counsel for a certain stockholder or stockholders, and said that he would like to look into our affairs. I said, "We have nothing to conceal. Our books have always been open to every stockholder." He said, "I am no bookkeeper. Would you permit my accountant to look over your books?" I said, "Certainly." So in due course of a day or so an accountant put in his
20 appearance with an order from Mr. Davis and we permitted him to look over our books. It seems that the chief thing that was done was to copy a list of the creditors of the company. It was called to my attention a few days after that by several creditors that a certain law firm in Camden had sent out a stinging hot letter to our creditors asking for the immediate placing of their accounts in their hands.

30 By Mr. Sexton.

Q. Somebody else told you about this letter?

A. No.

By the Court.

Q. Did you see the circular?

A. Well, I saw the letter sent out by the—one of the creditors showed me that. Realizing that the credit of the company was being impaired very seriously in an underhand manner I called a meeting at the Camden Y. M. C. A. for the purpose of acquainting the stockholders with the true facts.

By Mr. Reilly.

10

Q. What day was that?

A. That was on November 18, 1914. After presenting my financial plan for the liquidating for a considerable portion of the liabilities of the company certain interests and attorneys present at that first meeting began to raise a great hue and cry.

Q. How many attorneys were there?

A. Well, to my knowledge there were at least six. There were also discredited stock salesmen, others I have every reason to believe were not stockholders of the company, also, that took part in this general melee. Like a flash the stockholders got into a panic, and instead of following my leadership, as they had always done, they allowed this plan to fall down and as a consequence nothing was accomplished at this meeting. The next day Mr. Davis took charge of the company as receiver.

20

By the Court.

Q. By whom was he appointed, do you know, what court? 30

A. By the United States Circuit Court at Trenton.

Q. It was a bankruptcy proceeding then, was it?

A. It was a bankruptcy proceeding. They had finally succeeded, this law firm I spoke about, who were

attorneys evidently for Mr. Davis, had finally rounded up three of our creditors whose claims totaled up \$500.

By Mr. Peacock.

Q. On whose petition was the receiver appointed, do you know?

A. The names of the creditors?

Q. Yes.

10 A. That was Mr. Fry, the owner of the Camden Courier, Mr. Waterall, a paint manufacturer, and Mr. Fry, a coffee broker in Philadelphia.

Q. And what was the aggregate of their claims?

A. They totaled something over \$500.

Q. And that was the three petitioning creditors, and their claims amounted to \$500 in the aggregate?

A. Yes.

Q. Who was their attorney?

A. Wilson & Carr, of Camden.

20 Q. Represented by Mr. Carroll, who was in court the other day?

A. Yes.

Q. And who was the attorney of Mr. Davis also, the receiver?

A. Yes; also trustee in bankruptcy.

Q. Also Mr. Davis' attorney as trustee in bankruptcy?

A. Yes.

30 Q. The entire matter was controlled by Messrs. Wilson & Carr and Mr. Carroll and Mr. Davis?

A. It was quite evident.

Q. Now at this meeting you spoke of did Mr. Davis and Carroll and the other attorneys all have something to say at that meeting?

A. Very much.

Q. Concerning what?

A. It was their idea that because I was asking for more subscriptions it was no more than my duty to present a very detailed report of the company's condition.

Q. Did you present it?

A. I presented this financial statement and this of July 31st, and they seemed to pooh-pooh the idea.

Q. What did they say concerning it?

A. Well, it was not, as they put it, up to date.

Q. Well, did they suggest to the stockholders that some one of the stockholders would make a move as to the appointment of a receiver? 10

A. No suggestion was made at that meeting. The only suggestion was made that a firm of accountants would make an investigation of the company's affairs, but that was not waited for, as evidenced by the appointment of a receiver.

Q. Did you in any way indicate to these three creditors whose claims amounted to about \$500 your inability to pay that claim or those claims? 20

A. I certainly did not.

Q. And you were able to pay them at that time, weren't you, your company, I mean? Your company was able to pay those claims?

A. We had alyways paid our claims or paid the claims of creditors.

The Court. No, that is not the question. Were you able to pay those claims, is the question? 30

A. We were.

By Mr. Peacock.

Q. You had sufficient cash on hand at that time to do it?

A. As far as I can recall we would have had or did have, rather.

Q. What do you mean by that, you would have? You mean by the collections you made on new stock?

A. I mean this: that our daily sales of merchandise were always sufficient to take care of the claims of creditors. We probably would not in the morning be
10 able to take care of certain claims coming due, but before the day was over, on certain sales of merchandise made we would have the money.

Q. Didn't your company have sufficient cash in the bank at that time to pay them?

A. As far as I can recall, yes.

Q. Is it shown by your report? Do you need it to refresh your memory? What is that amount?

A. The cash on hand was \$752.43.

20 By the Court.

Q. That was July 31st, wasn't it?

A. Yes, that was on July 31st, at that time.

Q. Is that the cash you had on hand at that time?

A. Yes.

By Mr. Peacock.

30 Q. What cash on hand did you have on this date?

The Court. \$700?

A. \$700; yes, sir.

Q. Now what cash on hand did you have at this time, if you know?

The Court. That is, November 18th?

Mr. Peacock. November 18th.

A. I couldn't exactly say, because that was left to our financial department, just the exact balance on hand. But in addition to having cash on hand I had borrowing resources which would always take care of any claim it was necessary to meet.

Q. That week did you borrow money, just two or three days before the receiver was appointed? 10

A. I think it was about five days before the receiver was appointed.

Q. And whom did you borrow that from?

A. I borrowed some money from my father.

Q. How much?

A. \$1,000.

Q. And that was just five days before the receiver was appointed?

A. Yes.

Q. Then you did have sufficient money to pay these claims, didn't you? 20

(Objected to.)

Q. It was turned into bank in the name of the Linwood Haines Company?

A. Yes.

By the Court.

30

Q. Do I understand that the \$1,000 would have paid all the claims?

A. No, sir; it would not have paid all the claims.

Mr. Reilly. We are talking about the claims of the petitioning creditors.

By the Court.

Q. Why didn't you pay those claims?

10 A. I will explain it this way. The war conditions at that time had unsettled, you might say, the minds of certain creditors; they were more insistent than they were at any other time. And due to the fact that this letter was sent out by the law firm I spoke about, really claims that were not due were more or less asked for by our creditors.

Q. And therefore if you had paid the three in question you would have given a preference?

A. That is the way I felt about it.

Mr. Reilly. Then, if your Honor please, I object to the question and pray an exception.

20

The Court. He has answered it.

Q. Then there had not been any demand made upon them?

Mr. Reilly. May I have my objection?

The Court. An objection to the answer?

30

Mr. Reilly. No, to the question.

The Court. You came late with your objection.

Mr. Reilly. I move that the answer be stricken out.

The Court. Upon what ground?

Mr. Reilly. That I may be allowed to make my objection. I tried to be ready. The witness was more ready than I and took advantage of us as to the counsel, I would say. I surely would interpose an objection to that and did it as soon as I could.

The Court. I will give you the benefit of the doubt.

10

(Objection noted for defendant as ground of appeal.)

The Court. You may put upon the record the objection to the question and note the objection overruled and an exception allowed.

By Mr. Peacock.

Q. Had there been any demand made by those 20 three creditors for the payment of those bills at that time, that you know of?

A. Yes, they had asked for their bill but I told them that we would take care of them; it was my intention to do so.

Q. When was that?

A. Well, possibly a few days before the receiver was appointed.

Q. A few days before?

A. Yes.

30

Q. Who made the demand, do you know?

A. Well, I think that they did themselves individually.

Q. What do you mean by they did?

A. The three applicants for receivership.

Q. Through whom did they make that demand?

A. Well, they called up the bookkeeping department and it was finally brought to my attention that they had.

Q. It came to your attention later on?

A. Yes.

Cross Examination.

10

By Mr. Sexton.

Q. What business did you say you had been in, Mr. Haines?

A. Why, I represented a Philadelphia banker and was associated in an advertising business and sold securities.

Q. Were you ever in the Chester County Lighting Company?

A. I was never in that myself personally. I represented Mr. Warnock, of Philadelphia, who was a banker handling the company.

Q. You had an interest in it, did you not?

A. Why, I eventually purchased some of the shares of the Chester County Electric Company.

Q. And what happened to that company?

A. The company finally went into an involuntary bankruptcy.

Q. You didn't mention that as one of the companies you were in?

30

A. That was covered by the fact that I represented Mr. Warnock, the banker who was controlling that. I didn't really represent the company direct.

Q. Mr. Haines, how much of the capital stock did you own in this company?

A. Of the Jersey or the—

Q. We are talking now of the Jersey Company or the Linwood Haines of America.

A. Yes.

Q. How much did you own of that?

A. I owned fifty-one per cent. of the common stock.

Q. Fifty-one per cent. of the common stock?

A. Yes, sir.

Q. Then there was, did I understand, \$500,000?

A. The capitalization was \$500,000, divided into 10 preferred and common.

Q. And how much common stock was there?

A. There was \$375,000 the total issue of common.

Q. \$375,000?

A. Yes, sir.

Q. Of which you owned one-half, is that right?

A. Yes, sir. Well, no, I owned of the common stock issue, I owned more than half. I owned of the \$375,000, I owned \$251,000.

Q. You owned \$251,000?

20

A. Yes.

Q. How much was owned by other stockholders?

A. At the time of the sale to the Delaware Company the \$125,000 preferred and \$125,000 of common, roughly estimated.

Q. The common stock then was given as a bonus with a share of preferred?

A. Right, sir.

Q. So that the only cash paid would be \$125,000?

A. That was the amount involved. I don't think 30 it was quite \$125,000. I think it was about \$123,000. There were a few shares issued.

Q. Your interest, however, was always a controlling interest; is that so?

A. Yes.

Q. Did you pay cash for your stock?

A. At the time of the formation of the company my interest was secured for the plans of the company.

Q. For the plans?

A. Yes.

Q. You mean your ideas about the company; is that right?

A. Well, it was more than an idea. It was my plans that I had worked out for a period of ten years.

10 Q. What experience had you had prior to that in the mail order business?

A. I was associated with E. St. Elmo Lewis, one of the best known mail order advertising experts in the United States.

Q. How long had you been associated with them?

A. The period of being directly with them and associated under my own men, possible two or three years.

Q. Two or three years?

A. Yes.

20 Q. So that you obtained this \$251,000 worth of capital stock in two or three years; is that right?

A. I did not. That covered my general experience in other lines, business experience.

Q. Well, I am talking about mail order experience.

A. Well, you might say that it would cover that.

Q. Did you pay any money at all for the \$251,000 worth of stock?

A. The cost of procuring the charter was subscribed by myself.

30

By the Court.

Q. How much is that?

A. Oh, I suppose around \$250.

Q. That included counsel fees, I suppose?

A. I think that included the entire cost.

By Mr. Sexton.

Q. Then \$250 is all the money that you paid on account of this \$251,000 worth of stock; is that so?

A. Yes, that is correct.

Q. Who obtained the subscribers for the sale of the common stock?

A. Common or preferred?

10

Q. Preferred, rather.

A. We had quite a sales force, as high as twelve men at one time.

Q. At one time? When was that?

A. Well, back in the spring of 1914.

Q. How many men did you have employed in the shop, or the stores, rather? You said, I understood, fifty or sixty.

A. In the spring of 1914 we had a payroll, yes, of fifty or sixty.

20

Q. You heard Mr. Douglass say that you had about nine?

A. He was referring to the department heads, I presume. I don't know. We had that many department heads at least.

Q. What would you pay for subscriptions to stock?

A. Well, I believe that the cost of selling our stock netted or cost us about seventeen per cent. That included traveling expenses.

Q. As a matter of fact, didn't you allow twenty per cent. for the sale of stock?

30

A. In some cases fifteen, in some cases twenty, but as I did not receive any commissions all of the work averaged up about seventeen per cent.

Q. What was your salary?

A. My salary, I figured it up last night, netted me during the two years and three-quarters of its existence just \$31 and some odd cents per week. But it was not net to me, because I was constantly traveling and entertaining for the company and the major portion of that \$31 was spent for the benefit of the company.

Q. The plan of the company was to pay cash, I understand you; is that correct?

10 A. Well, I never claimed that plan of our company was to pay cash.

Q. Did you as a matter of fact pay cash?

A. I always considered it cash.

Q. Were there ever any bills over ninety days old?

A. As far as I can recall not.

Q. How long had Mr. Waterall's bill been running, William Waterall & Company?

A. Well, I really couldn't say about that. Of course that bill was cumulative, you might say, as we
20 were buying daily from time to time.

Q. How long had the first account been running?

Mr. Reilly. I object to that as immaterial.

Mr. Sexton. Why?

The Court. Oh, no. I think it is material, the different kinds of business of which this defendant spoke to Mr. Blatchley in view of the large floating indebted-
30 ness, his claim that the company was solvent. Now if the state can show that he is in possession of fact contrary to his present declaration, it is perfectly competent to show it.

Mr. Reilly. If your Honor please, if a bill was un-

paid for ninety days is that an indication that the concern is insolvent?

The Court. No, if the State pursues the examination and shows an accumulation of bills, and that they were not able to pay the bills.

(After further argument.)

The Court. The form of the question is wrong. 10
You may reframe it.

Q. Did you have business transactions with Waterall & Company, Mr. Haines?

A. The company did.

Q. Do you know anything about the transactions with them?

A. No, I do not. The transactions were either with the department head or with our accounting department.

Q. Do you know anything about the account of Spies & Levis? 20

A. I don't know anything in particular about any of them.

Q. You don't know anything in particular about any of the accounts?

A. Only in a general way.

Q. Well, what do you mean in a general way?

A. Well, as they became due from time to time I would have a certain list of claims to pay, or accounts to pay, and I would say, "All right, we will take care of them." 30

Q. Did you ever order any goods?

A. Personally no.

Q. Did you ever give any instructions as to the ordering of goods from any creditors?

A. I always made it a policy—

Mr. Reilly. Won't you answer yes or no?

A. No, I did not.

Q. Then you don't know anything at all about the creditors of the concern?

10 A. I know very little.

Q. Very little?

A. Yes.

Q. Do you know how you paid them?

A. In a way.

Q. Well, who paid them?

A. I just stated that from time to time as the—

Q. Who would sign the checks?

A. I would.

20 Q. Would you make any investigation as to the correctness of the accounts?

A. I presumed that our accounting department was thoroughly efficient and I trusted them.

Q. Do you know whether or not any of the bills of this company went over ninety days?

A. To my knowledge, no.

Q. You said on your direct examination that this company did a cash business, what you consider cash, Is that so?

A. I considered it so.

30 Q. Well, you knew about it then, did you not, Mr. Haines?

A. About what?

Q. You knew how the creditors were paid and the course of conduct of the business?

A. Well, it was brought to my attention that cer-

tain bills, certain houses we dealt with, we must send a check in advance; certain ones would probably have a bill of lading with his draft attached to the bill of lading; in others we would have ten, twenty, thirty or sixty days, I know that.

Q. You did say on your direct examination that your company did a business which you considered cash?

A. I so considered it.

Q. Now you tell me that you don't know anything about the claims of the creditors. Is that so? 10

Mr. Reilly. I object to that as an argumentative question.

The Court. Yes, I think it is inclined to be argumentative, and is objectionable for that reason.

Q. Did any of the creditors speak to you personally about the payment of bills?

A. I think that from time to time they did. 20

By the Court.

Q. Why did they speak to you, because they were overdue?

A. No, they wanted me to take care of them when they were due.

By Mr. Sexton.

30

Q. Did any one ever speak to you concerning their account because it was overdue?

A. Not to my knowledge.

Q. Did the young lady, the bookkeeper, ever call your attention to the fact that the bills were overdue and

creditors were pressing?

A. No, sir.

Q. That is not true?

A. No, sir. I might qualify that by this—

Q. Oh, no. Let your counsel ask that. Have you any particular knowledge about the claim of the Sickler Company?

A. That was a bill for printing.

10 Mr. Reilly. Yes or no, please.

A. Yes.

Q. What was that for?

A. Printing.

Q. You want to modify your former answer then in reference to the Sticker Company claim, do you?

Mr. Reilly. Not in the least.

20 A. No, sir.

Q. Do you know whether the Sickler claim was overdue or not?

A. I do not. I know it was not overdue. On printing bills we had really a longer time than other bills. At certain times printing bills were very large and printers always allowed me to pay so much on account from time to time.

Q. Was any part of the Sickler bill at any time over ninety days overdue?

30 A. To the best of my knowledge no. The bill they had was of recent origin.

Q. Are you familiar with the account of Spies & Levis?

A. None whatever.

Q. Do you know what the terms were of your dealings with them?

A. No, sir.

Q. Are you familiar with the account of the American Electrotpe Company?

A. I am not.

Q. Do you know of a bill due by the company to any creditor that was a year old?

A. Not to my knowledge.

Q. Were there any?

10

A. Not to my knowledge.

Q. Did your firm do, as you claim, a cash business?

The Court. Oh, well, he has said that time and time again. It is a question for the jury to say.

Q. At the time of the meeting in the Y. M. C. A. was there enough funds in the treasury to pay the obligations of the concern?

20

The Court. That is, you mean the current obligations of creditors?

Mr. Sexton. Yes, I mean the obligations, the pecuniary obligations, as they matured.

(Objected to as immaterial. Objection overruled.)

(Objection noted for defendant as ground of³⁰ appeal.)

Mr. Reilly. Won't you let me give a reason?

The Court. Yes, on the record you may. What is your reason?

Mr. Reilly. My reason is this. It is already in the testimony here that this concern was a solvent concern at the date of the filing of the petition in bankruptcy, and also at the date of the appointment of the receiver. Now it strikes me that it would be a hardship indeed. I might add further the testimony of the State's witnesses
10 is today that not a creditor will suffer but he will get his bills in full; and it would be a hardship indeed to say that by reason of some eliminated fact, such as sufficient cash in hand to pay the claims of all creditors—and we don't know what magnitude their claims might assume—it would be a hardship and it is not material, in view of the other testimony in this case, as to the solvency of this company, as to whether or not there was cash enough in bank to have paid those claims. It might follow, if your Honor please, in the ordinary course
20 of reasoning, that a claim was not presented. Men doing business, merchants and vast enterprises are often in the situation of not possession cash in hand to pay a claim which may be handed it or a dozen or two claims beyond the amount of cash which they have in bank; but if afforded opportunities they can raise the cash, as Mr. Haines testified he did when two or three importunate creditors came along, he resorted to his borrowing capacity and got the money for meeting the claims from his father. It strikes me it is wholly immaterial.
30

The Court. Objection will be allowed.

(Objection noted for defendant as ground of appeal.)

(Question repeated.)

A. You mean the ones that matured or all the obligations, that is, all the claims of creditors, or total liabilities, rather?

Q. Matured claims.

Mr. Reilly. If you know now.

Mr. Sexton. Now I object to the counsel interrupting. 10

Mr. Reilly. I object to the form of your question.

Mr. Sexton. Then you object to my question and you let the witness alone.

Mr. Reilly. I object to the form of the question.

The Court. Let us proceed in an orderly way. I 20
think the question is objectionable in the sense that it
does not include the defendant's knowledge or scienter.
If you will add, "if you know," you may ask the question.

A. I don't know.

Q. Did you not say in your direct examination
that there was enough to pay the three creditors who
subsequently filed a petition?

A. I think so. 30

Q. Well, you knew how much money there was
then, did you not?

A. Well, I knew it amounted to several hundred
dollars.

Q. Did you not give us the figures?

A. Not at that time; no, sir.

Q. You stated that the aggregate of the three creditors would be about \$500?

A. Yes.

Q. And that you had enough money in the bank to pay them; is that right?

A. Yes, but they gave us no chance.

Q. Was that all the money you had in bank at that time?

10 A. I think so; that was active money on hand. Of course our sales daily amounted to so much.

Q. Then you do know?

A. What is that?

Q. You do know that you had \$500 in the bank?

A. I have every reason to believe we had that much on hand. I have reason to believe that. Of course, as I say, the amount varied, really, every hour, according to the sales that were being made.

20 Q. Do you know how much the matured obligations of the firm amounted to on the day of the meeting in the Y. M. C. A.?

A. I don't know of any absolutely matured obligations nor the amount.

Q. Were the claims of the three creditors that filed a petition matured at that time?

A. Not that I know of particularly.

Q. Well, have you any knowledge whatever on it?

30 Mr. Reilly. I submit that he has answered and object to the question. It savors of a repetition.

The Court. Yes, his answer is that he has no particular knowledge of the account.

Mr. Sexton. The question goes to what knowledge he may have.

The Court. Ask him whether he has any knowledge, whether it is particular or otherwise.

Q. Have you any knowledge of it?

A. Would you mind asking the question in full?

(Question repeated.)

A. I had no knowledge that they had matured.

10

By the Court.

Q. Hadn't you been spoken to by one or more of those three creditors at that time as to the payment of their bills prior to the meeting of November 18th, wasn't it? Was it November 18th, the Y. M. C. A.?

A. Yes, the Y. M. C. A. was November 18th.

Q. Hadn't these creditors spoken to you at that time?

A. That had been brought to my attention, that 20 they desired—

Q. That they were asking for a settlement?

A. That they desired a settlement.

By Mr. Sexton.

Q. Well, you had some knowledge of the fact, didn't you, Mr. Haines?

A. Well, I had knowledge that they had asked for a settlement.

30

By the Court.

Q. Were your creditors in the habit of asking for settlements before their claims matured?

A. They never had until this letter was sent out by this law firm stirring up trouble among them, and that was a few days prior to this meeting.

By Mr. Sexton.

Q. In order to pay the obligations of the company, Mr. Haines, it was necessary to make those assessments on the stockholders, was it not?

10 A. It really was not an assessment. It was purely voluntary on their part.

Q. Well, you had to have money, that is one thing certain; isn't that so?

A. I felt—

Q. Yes or no; did you have to have money or not?

A. Yes, we had to have money.

By the Court.

20 Q. Now was the money which you received from these new subscribers or subscribers for new stock used for the purpose of liquidating your floating indebtedness?

A. It went into the general fund.

Q. And was checked against for that purpose?

A. I really couldn't say.

Q. Well, wasn't that the purpose of your visit to Mr. Blatchley and others?

A. No, sir.

30 Q. Why did you want this new capital?

A. To conduct our business. It was growing more and more rapidly and required more and more capital.

Q. Do you say that these new subscriptions were not used for the purpose of paying past due indebtedness?

A. I wouldn't say so.

By Mr. Sexton.

Q. As a matter of fact, on July 31st, when you had this inventory made, there was some twenty odd thousand dollars due at that time; is that not a fact?

A. That statement doesn't show that.

By the Court.

10

Q. Well, is it a fact or not?

A. It is not a fact.

By Mr. Sexton.

Q. How much was due to your creditors at that time?

A. None that I know of that was due. That is a statement of our liabilities.

20

Q. Well, that is what I am asking you about. You owed creditors on July 31st?

A. We owed creditors on July 31st.

Q. How much did you owe your creditors?

A. I think in the neighborhood of \$22,000.

Q. Well, that is what my question was. On the 31st day you did owe \$22,000?

A. Yes.

Q. And you were out seeking stock subscriptions at that time?

30

A. The \$22,000 was not due.

Q. Well, whether that was due or not, you did owe it to your creditors?

By the Court.

Q. How much was due on July 31st?

A. I think about \$22,000.

Q. Due?

A. No, sir.

Q. How much was matured indebtedness on July 31st?

A. As far as I know, I don't know of a single bill
10 due at that time. If it had been due it would have been taken care of.

Q. Were you in a position to take care of twenty odd thousand dollars indebtedness on July 31st?

Mr. Reilly. If your Honor please—

The Court. No, he has been said that "if it had been due we would have taken care." Now I ask him whether he had sufficient assets. I am going to have an
20 answer to that question.

Mr. Reilly. I have an objection.

The Court. The objection is overruled.

(Objection noted for defendant as ground of appeal.)

A. When I stated that we could take care of it if
30 it had been due I didn't mean for all the \$22,000 liabilities coming due at one moment; I meant as it came due serially. Of course all bills were dated from time to time.

By Mr. Sexton.

Q. So that during July and the months following you always owed some twenty odd thousand dollars to creditors?

A. Yes, sir.

Q. You had received some \$125,000 from shareholders, had you not, Mr. Haines?

A. I think the sum of about \$123,000 at the time, to July 31st. 10

Q. July 31st?

A. Yes.

Q. What became of that?

A. It was expended in various directions.

Q. Well, what directions?

A. In the purchase of merchandise, in advertising, in the printing and preparation of catalogues, in compiling a mailing list, from 40,000 to 60,000 names, in maintaining on the road large exhibits at the county fairs, maintaining a stock selling force, overhead expenses and various ways. 20

Q. Did you pay your overhead expenses with your capital stock?

A. Not being a bookkeeper I can't exactly answer that question.

Q. Well, you have already stated, Mr. Haines, that you used your capital stock for overhead expenses; isn't that so?

A. Yes.

Q. Now I ask you if you did. Did you or not? 30

The Court. He said so. He needn't answer it again.

Mr. Sexton. Well, let it be at that then. I want

to give him a chance and call his attention to it.

Q. Who is this Mr. Richardson that you spoke of, Mr. Haines?

A. He is a gentleman evidently about fifty-two years of age.

Q. Is he here today?

A. No, sir.

Q. Where is he?

10 A. He is evidently in the hands of his physician.

Q. You during the conduct of this business had planned it and carried it on in the way that you thought best for the company; is that right?

A. For the best interests of the company; yes, sir.

Q. You had been the leader, so to speak?

A. I was the instigator of the enterprise and also endeavored to carry out its plans.

Q. I asked you if you had not been the leader.

20 Mr. Reilly. I object to the question. What does he mean by a leader?

The Court. Well, the question is what does he mean by leader. Do you mean the active head of the enterprise?

Mr. Sexton. Well, he answered my question, he said, "They followed my leadership, as they usually did."

30 Mr. Reilly. I object to it.

The Court. I think the explanation of that is sufficiently clear.

Mr. Sexton. I will strike it out.

Q. When you saw Mr. Blatchley down at Camden did you show him the books?

A. I did not.

Q. Did you tell him anything about the fact that you had twenty odd thousand dollars worth of unpaid creditors?

A. I did not.

Q. Did you tell him anything about the twenty odd thousand dollars worth of creditors at the time you were at his house? 10

A. I did not.

Q. In preparing your cuts, Mr. Haines, how would they be prepared?

A. In the first place the merchandise would be selected that was to go into the catalogue. The advertising department and the head of the department in which the merchandise was to be illustrated or described had a conference and they decided upon what kind of an illustration was to go with it. Then the services of an artist were secured who prepared drawings for the illustration. Then a photograph was prepared for this drawing and it was transferred to a copper plate; then zinc etchings were made of that. 20

Q. Did you make a drawing in this case, Mr. Haines? Was a drawing made? (Paper shown witness.)

A. That is up to the advertising department.

By the Court.

30

Q. No, you don't answer. Did you make a drawing?

A. I didn't make the drawing; no, sir.

By Mr. Sexton.

Q. Was a drawing made?

A. Not to my knowledge.

Q. And you are not at all sure whether these drawings were made at all, are you, Mr. Haines, as you have just related?

A. I am positive there was not a drawing made.

10 Q. Didn't you just testify that an artist would come and make drawings and you would photograph the drawings?

A. That is the merchandise I am speaking of.

Q. Does that refer to all cuts?

A. No, sir.

Q. How would you obtain the other cuts?

A. For instance, if we desired the photograph of a factory that made our line of merchandise for us, a certain line of merchandise, the manufacturer would send a photograph of his factory and from that a half tone
20 would be made.

By the Court.

Q. What would you then do, use that factory as an illustration of yours in that enterprise, that is to say, you were the owner of the factory?

A. No, sir; no claim was ever made that we were the owner of any particular factory that we ever represented.

30

By Mr. Sexton.

Q. You were familiar with the plan as outlined by Mr. Blatchley, to have this Freehold branch, Mr. Haines?

A. As outlined by Mr. Blatchley?

Q. You, you heard Mr. Blatchley's testimony?

A. I was familiar with the plan.

Q. And you say that you did not tell Mr. Blatchley that at his house?

A. About the plan?

Q. Yes.

A. I didn't say that.

Q. Didn't you say on your direct examination that Mr. Richardson told him about the plan and you restated on your direct examination what Mr. Richardson had told? 10

A. I reiterated what I presume Mr. Richardson had told. I had no knowledge of what Mr. Richardson told.

Q. And all that you said was that while you stepped out you presumed Mr. Richardson had said that, is that so?

A. No, I didn't make any statement of that kind.

Q. Well, let me understand it then. You were testifying on your direct examination about the state- 20
ment being made to Mr. Blatchley that they were going to have in Freehold—

Mr. Reilly. I object to this form of question. Here is a recital of testimony that we don't know whether it occurred or not. From the viewpoint of the Prosecutor now here comes a long declaration of things the Prosecutor thinks has been testified.

The Court. Yes, you may ask him what he told 30
Mr. Blatchley with reference to the Freehold branch.

Q. What conversation did you have with Mr. Blatchley while at his house in Freehold?

A. Do you want me to give the entire conversation?

Q.

The Court. In reference to the storehouse, you mean?

Mr. Sexton. In reference to the storehouse and the subscriptions of stock in Freehold.

10 Mr. Reilly. That all went into the case, if your Honor please.

The Court. I suppose he has a right to test his credibility. We always do that, to see whether he will stick to his story.

Mr. Reilly. No, I understand that he has never said that he stepped out of the room while this conversation was on.

20

The Court. No, he has already testified, Mr. Sexton, that he spoke to Mr. Blatchley about establishing a storehouse and outlined a plan by which it was to be done.

Mr. Sexton. All right. Then I don't want it again.

30 Q. Was there any certificates for stock issued, Mr. Haines, to any of the Freehold subscribers?

A. Well, some of our Freehold subscribers were old subscribers, dating back a year or more. They received their certificates, evidently.

Q. Any that were taken after July 31st, when you were going to change the corporations?

A. No, no certificates were delivered to any of them after July 31st.

Q. What was the idea of changing these corporations, Mr. Haines?

(Objected to as immaterial.)

The Court. Yes, I hardly think it is material, Mr. Sexton. Of course it may be competent along this line: that this proposed new corporation was simply for the purpose of liquidating the indebtedness and the affairs of the old corporation and this man knew it at the time he was talking with Blatchley. It may be competent and pertinent as showing his knowledge, whether he was not charged with knowledge of the precarious financial condition of the company. 10

Mr. Sexton. Oh, I don't know that there is any question about it. Strike it out.

Q. Did you tell Mr. Blatchley that there were two companies in existence by the name of the Linwood Haines Company Limited? 20

(Objected to as immaterial. Objection overruled.)

Mr. Reilly. The receipt indicates just what he had told him.

The Court. Yes, the receipt and the check went different ways. The receipt was signed by the Linwood Haines Company of Camden and the check was deposited with the Linwood Haines Company of America. 30

Mr. Reilly. The check is payable to the Linwood

Haines Company Limited.

The Court. Now look at the endorsement.

Mr. Reilly. It is endorsed in blank, Linwood Haines Limited of America.

The Court. Now your receipt is what?

10 Mr. Reilly. Linwood Haines Limited of Camden.

(Question repeated.)

A. I don't know as I did.

Q. Why didn't you tell him what company you were asking him to buy stock in?

A. I did tell him the company I was asking him to buy stock in.

Q. What company did you tell him?

20 A. All stock after July 31st was sold in the "Camden Inc."

By the Court.

Q. How did it happen that this check was turned over of the Linwood Haines Company of America?

A. This was during the transition period from the old company to the new and was one of the details that had not, I presume, in the bank account, been changed.

30 Q. As a matter of fact was not that check deposited to the general account of the Linwood Haines Company of America?

A. I presume so.

Q. It was not deposited to its stock account, was it?

A. We had no stock account.

Q. So that the payment of current bills of the Linwood Haines Company of America would be checked against that account, wouldn't it?

A. Well, I couldn't say in regard to that.

Q. Well, why didn't you know? You were the treasurer of the concern?

Mr. Reilly. President.

10

A. President.

The Court. He also said he was treasurer.

A. That is right, yes. I would say that it was used for the general purposes of the company.

By Mr. Sexton.

Q. In other words you were taking money paid 20 for the capital stock of the Linwood Haines Limited of Camden and paying the debts of the corporation, the the Linwood Haines Limited of Camden?

A. No, sir.

Q. You were not?

A. No, sir.

Q. The stock which Mr. Blatchley bought was in the Linwood Haines Limited of Camden?

A. Yes, sir.

Q. Had you been advised that any creditors were 30 going to sue this company prior to the meeting of November 18th at the Y. M. C. A.?

A. No, sir.

By the Court.

Q. When was the Linwood Haines Company of Camden incorporated?

A. On the 1st day of August, 1914.

Q. And when was the Linwood Haines Company of America incorporated?

A. In February of 1912.

Q. Had there been a transfer of the business and
10 assets of the Linwood Haines Company of America to the Linwood Haines Company of Camden at the time of your visit to Blatchley?

A. Yes, subject to the liabilities of the Jersey Company.

Q. Subject to the liabilities of the Linwood Haines Company of America?

A. Yes.

Q. Did you tell Mr. Blatchley that?

A. Yes. Well, I might withdraw that. I don't
20 know as that was dwelt upon. We didn't mention it.

Q. Didn't refer to it?

A. No, sir; didn't refer to it.

Q. This Linwood Haines Company of Camden was comparatively a new company?

A. Well, it dated from August 1st.

Q. August 1st of that year?

A. Yes, sir.

Q. And this visit to Blatchley was October 23rd?

30 Mr. Sexton. The 26th.

Q. What was the date, October 26th?

A. Yes, sir.

Q. The visit to Mr. Blatchley's home at East Freehold was October 26th, was it not?

A. Yes.

Q. Did you tell Mr. Blatchley at that time that there had been a meeting of the creditors on the 18th of October?

A. I didn't know anything about it.

Q. The meeting of the stockholders?

A. The meeting of the stockholders occurred afterward.

Q. Was there a meeting of the stockholders on the 18th, the 18th of October? 10

A. There was a meeting of the stockholders on the 18th of October called by myself; yes, sir.

Q. Did you tell Mr. Blatchley of the difficulty you were having with those creditors at that time?

A. I understood Mr. Blatchley was present at that meeting.

Q. October 18th?

A. No, sir; not on October 18th, on November 18th. There was no meeting prior to the time Mr. Blatchley purchased his stock that I know of. 20

Q. I thought you said there was a meeting of the stockholders on October 18th in which the attempted trouble with creditors was discussed.

A. No, sir; that was November 18th.

Mr. Reilly. It seems to me some witness testified that it was about ten days before the 18th. Another witness testified that it was six or seven days before, so I think the meeting was in November. 30

By Mr. Sexton.

Q. Was Mr. Richardson acting under your instructions in obtaining these subscriptions for stock, Mr. Haines?

A. As president of the company I made all contracts with the salesmen.

Q. And you would send him out for the stock?

A. Yes, sir.

Q. And it would be at your direction that he would go out soliciting from time to time for stock of the company; is that right?

A. Yes, sir.

Q. How long prior to the time that the company
10 went into the hands of a receiver was Mr. Richardson obtaining subscriptions for stock?

A. Oh, he was with us probably a year before.

Q. And he continued the whole time until the company went into the hands of a receiver?

A. Well, I can't say as he did. We had so many salesmen. I think that Mr. Richardson, if I recall rightly, stopped for a short while.

Q. Did he continue right up until the time when the company went into the receiver's hands?

20 A. I think he was here the day before the meeting was held at Camden, if I recall rightly.

By the Court.

Q. Here at Freehold?

A. Yes, sir.

Q. Why did you come down with Mr. Richardson?

A. I came down to return the visit of Mr. Blatchley.

30 Q. It was a social anenity then on your part, was it?

A. Largely.

By Mr. Sexton.

Q. You also wanted to sell Mr. Blatchley stock if you could?

A. For the interest of the company; yes, sir.

Q. Oh, yes, for the interest of the company.

Redirect Examination.

By Mr. Reilly.

10

Q. Mr. Haines, at the time of the visit of Mr. and Mrs. Blatchley at Camden, as you have testified, on the 23rd of November--was that right as to the date? No, the 23rd of October--did Mr. Blatchley ask to see the books?

A. The books were never mentioned.

Q. I ask you now—you can answer me yes or no, if you please—did he ask to see the books?

A. No, sir.

20

Q. Had he asked to see the books would you have shown them to him?

A. I certainly would.

Q. Why?

A. I always, if a stockholder should ask a question of the condition of the company, would show the books to anybody.

Q. You would have considered as a stockholder that he had the right, wouldn't you?

A. As my understanding runs he had a right.

30

Q. At the time the stock was sold to him on November 26th or 27th, whenever it was, did he ask then about the condition of the books?

A. The question was not broached in any way, shape or form,

Q. Where are those books?

A. The books are in the hands of the attorneys for the receiver, Wilson & Carr.

Q. Have you made efforts to get them here, either yourself or through your counsel? Now you know whether you did or not.

A. Yes, effort was made to get them here.

Q. Do you know why they were not produced here?

10 A. Because there were so many of them, I presume, and it would be rather bulky to carry them.

Q. And do you remember that that was the statement made in this court-room by Mr. Carroll, who had possession of them, on Thursday last, Friday last?

A. That was the statement they made.

Q. You had seen those books at some time?

A. Glanced over them from time to time.

Q. I show you a paper marked B for identification. Have you ever seen that before?

20 A. Yes, sir.

Q. Do you know where it came from?

A. It was presented to me by our accountant.

Q. By your accountant who?

A. Mr. Roberts.

Q. When?

A. July 31st of the same year.

Q. What does it purport to be?

A. Purports to be a statement of the assets and liabilities of the company of that date.

30 Q. Taken from where?

A. Taken from the ledgers of the company.

Q. Do you know that it came from there?

A. Nothing more than I have the statement of our secretary to that effect.

Q. Well, do you know that it came from the books?

A. I haven't personal knowledge that it came from the books myself.

Q. What is your belief in regard thereto?

The Court. Oh, no, that won't do. You can't put it in through your client now. He has closed the door.

Q. What did I understand you to say that the salary you drew was? 10

A. It averaged \$31 a week.

Q. That is salary?

A. Salary; yes, sir.

Q. This man Richardson, where is he?

A. Evidently at his home —

Q. Well, now, don't you know where he is?

A. At his home in Philadelphia.

Q. When did you see him last?

A. I met him by appointment at the Bingham Hotel, Philadelphia. 20

Q. When?

A. Well, possibly ten days ago.

Q. Did you serve a subpoena upon him?

A. Yes, sir.

Q. Did you try to secure his attendance here as a witness?

A. I did everything I possibly could.

Q. What efforts did you make?

A. I phoned four or five times, I sent my father after him. I made every effort. 30

Q. Then you have talked with him over the phone?

A. In addition to meeting him, four or five times on the phone.

Q. Did he give any reason why he could not come here?

A. He claims he was taken by stroke last August and he is virtually a nervous wreck and has been under the constant attention of a physician.

Q. Did you personally serve a subpoena upon him?

A. Yes, sir.

Q. Where?

A. At his Philadelphia hotel.

10 Q. What else did you do besides serving a subpoena?

A. Gave him sufficient to pay his railroad fare and whatever his fee would be.

Q. Did he promise to come?

A. He promised faithfully to come.

Q. So it is through no fault of yours that he is not here?

A. I have made every effort.

Q. Yes or no.

20 A. No fault of mine.

Q. How much preferred stock did I understand you to say you had?

A. I have no preferred stock.

Q. Did you ever have any preferred stock?

A. Not a dollar's worth of it.

Q. In neither of those companies?

A. No, neither company.

Q. I am not quite familiar with the terms myself, preferred and common. What is the difference between
30 preferred and common stock?

A. Preferred stock means that it has priority over the assets and earnings of the company in respect to the common stock. The common stock—

Q. Then the preferred stock has to be paid first?

By the Court.

Q. Usually carries a fixed dividend, doesn't it?

A. Yes, sir.

By Mr. Reilly.

Q. The stock that you sold to Mr. Blatchley was preferred, was it?

A. Preferred stock; yes, sir.

10

By the Court.

Q. How much interest did it carry?

A. Seven per cent. per annum.

Q. Had you paid any interest on the stock which Mr. Blatchley held prior to that day of your visit?

A. None whatever.

Q. Had not paid any dividend?

A. Had not paid any dividend.

20

By Mr. Reilly.

Q. Why?

A. Well, the board of directors did not consider that they were justified in paying any dividend.

By the Court.

Q. Didn't have the money to do it with, did they? 30
Isn't that the reason?

Mr. Reilly. I object to the question.

The Court. I know, it is rather an objectionable question, but I will ask it.

Q. Did you have the money to pay the dividends with?

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of
10 appeal.)

Q. What is your answer? Did you have the money to pay the dividend with?

A. I don't think we did.

By Mr. Reilly.

Q. Do you know whether at the time that this stock was sold to Mr. Blatchley the assets of the company of which you were president exceeded its liabilities?
20

A. I had every reason to believe so.

Q. What was the name of your first company?

A. Linwood Haines Company of America.

Q. And when was that organized?

A. It was organized in February of 1912.

Q. February, 1912?

A. Yes, sir.

Q. According to your by laws, if you know, when
30 were dividends to be paid?

A. February and August.

Q. When was your new company organized?

A. The 1st of August, 1914.

Q. And it was what?

A. Linwood Haines Limited of Camden, Inc.

Q. Was that perfectly organized in October?

A. Perfectly organized?

Q. Yes.

The Court. That is, completely organized?

Q. Completely organized.

A. Yes, sir.

Q. And the dividends were payable when in that company? 10

A. I think they were the same month, February and August, if I am not mistaken.

Q. So that at the time your concern went into a receiver's hands the dividends were not yet due or payable?

A. Well, as I understood it dividends were really never due unless you earned them.

Q. Had you earned any? Had any been earned?

A. They had been earned when the company was young. 20

RECESS TILL 1.10 P. M.

Trial of the cause resumed at 1.10 P. M.

30

GEORGE HORACE ROBERTS, sworn for defendant.

Direct Examination by Mr. Reilly.

Q. Where do you live, Mr. Roberts?

A. Philadelphia.

Q. What is your business?

A. Public accountant.

Q. How long have you been such?

A. Outside of a period of about two and a half years with Linwood Haines Limited I have been a public accountant twelve or fifteen years.

Q. Had you any connection with the Linwood Haines Company Limited?

10 A. I had.

Q. And when did your connection with that concern begin?

A. About August, 1912.

Q. And when did it end?

A. My service with the Linwood Haines Limited, July 31, 1914, and of course it was resumed with the Linwood Haines of Camden incorporated on August 1st.

Q. 1914?

20 A. 1914, and ended it at the time of the bankruptcy on the 19th of November, 1914.

Q. What if any, official position did you have in those companies?

A. I was accountant and secretary of the company.

Q. I understood you to say secretary?

A. Secretary.

Q. What were your duties as accountant and secretary of those companies?

30 A. My duties as accountant were having full charge of the books and all records of the business. My duties as secretary were the usual duties of a secretary of any corporation.

Q. And will you relate to the jury in that particular what your specific duties were?

A. As accountant?

Q. No, as secretary.

A. As secretary?

Q. Yes.

A. Recording the minutes of the meetings; of course taking down the minutes, and there were several duties that came in the duties of a secretary.

Q. Was it part of your duties to familiarize yourself with the issuance of the stock?

A. Oh. yes; all stock was signed by me, in conjunction with the president of the company. 10

Q. How about the issuance of checks?

A. I signed no checks. They were signed by the treasurer of the company.

Q. Who was the treasurer?

A. Mr. Linwood Haines.

Q. How about checks that were received?

A. Checks received were received by me as accountant.

Q. I mean checks payable to the company.

A. That is what I mean. 20

Q. And upon their receipt what would you do?

A. I would turn them over to my assistant, Miss Berry, to record in the cash books.

Q. I show you a check, which is marked Exhibit S 1. Can you recall whether or not you ever received that check?

A. I can.

Q. Can you recall when you received it?

A. I received that check October 27, 1914.

Q. Can you recall from whom you received it? 30

A. I received the check from Mr. Richardson, our salesman.

Q. And where did you receive it?

A. At my office.

Q. Who was present when it was handed to you?

A. No one but Mr Richardson and myself.

Q. Did I understand you to say the date you received it?

A. The date of the check.

Q. From Mr. Haines?

A. Mr. Haines was not there when Mr. Richardson handed me that check. The check was handed to me previous to Mr. Haines' arrival in the morning.

Q. Of the date that you have specified?

10 A. Yes.

Q. When you received that check what did you do?

A. As I said before, I handed the check over to my assistant, Miss Berry, who recorded it in the cash book.

Q. And do you know what became of it after that?

A. It was deposited in the First National Bank of Camden on the same day.

Q. And by whom, if you know?

A. By Miss Berry. Miss Berry took all the deposits to the bank.

20 Q. Who stamped the endorsement upon it?

A. I did.

Q. Personally?

A. Personally.

Q. Was Haines there when you did that?

A. He was not.

Q. Did Haines give you any instructions in regard to that check?

A. He did not.

30 Q. Then that check took the usual course of business?

A. The usual course of all checks that came through my hands.

Q. Do you know just how many shares of common and preferred stock of this company were issued?

A. \$375,000 of common stock, and \$125,000 of preferred stock, \$500,000 in all.

Q. That issuance of \$125,000 of preferred stock represented how much in cash?

A. The issuance of \$125,000 of preferred stock represented \$125,000.

Q. Was it all paid in?

A. With the exception of those we had on the deferred payment plan. There was some stock—if you will allow me to explain that—some stock that we sold for 10 cash and some we sold on what we called the ten months' payment plan, ten per cent down and ten per cent a month.

Q. Now how many shares of the preferred capital stock was paid in?

A. Full paid?

Q. Full paid.

A. Full paid I should say about \$110,000.

Q. And the balance of \$15,000, what was the situation with that?

A. They were on the deferred payment plan,²⁰ whose stock was not issued until the amount was paid in full.

Q. What in cash did the common stock represent?

A. No cash at all.

Q. The common stock was issued in what way?

A. The common stock was issued as a bonus to those who purchased the preferred stock. Of course the common stock had no money value.

Q. Are you familiar with the holdings of Mr. 30 Haines in the concern?

A. Yes, sir.

Q. What were his holdings?

A. Mr. Haines held no preferred stock.

Q. His holdings then were common stock entirely?

A. All common stock.

Q. Are you familiar with the amount that Mr. Haines had paid into the concern?

A. Well, in payment of stock Mr. Haines paid no money into the concern. If I can go on and—

Q. In payment of what else did he pay in any money, or how did he pay in any money, for what purpose?

A. Well, in the inception of the company, before I was acquainted with Mr. Haines—that is, the company
10 was incorporated in February, 1912, and I did not become acquainted with Mr. Haines until about August.

Q. In the same year?

A. In the same year; and at that time—

Mr. Sexton. I object to anything before he became acquainted with Mr. Haines.

A. If you will allow me to explain—

20 The Court. The witness is about to state something that occurred in August, 1912. You may do that.

A. At that time, about August, 1912, I was engaged by the company to install a bookkeeping system for them in my line of business as a public accountant, and of course in my perusal of the condition of affairs at that time I was able to find out what money came in, where it came and where it went; and I did find—of course I cannot recall the amount, but before there was any money
30 paid in to the concern at all for any sales of stock Mr. Haines personally bore all the expenses of the company in the organization. As for figures I cannot tell. It has been so long ago I cannot recall the figures.

Q. You cannot tell in what amount—

A. I cannot.

Q. —the company was indebted to him?

A. I could not say at the present time

Q. Can you approximate it?

A. I can approximate it at probably \$300 or \$400.

Q. Are you familiar with the method adopted by the company in the payment of salaries?

A. I am.

Q. How were the salaries paid?

A. Salaries were paid weekly, with the exception of the two officers of the company, who received a salary which was Mr. Haines and myself, and we were paid so much a year, payable monthly. 10

Q. Do you know what the salary of Mr. Haines was?

A. The last year of the life of the company Mr. Haines' salary was \$2,500 a year. Previous to that his salary was \$25 a week.

Q. The last year of the life of the company do you know what proportion of that salary of \$2,500 a year was paid to Mr. Haines? 20

A. Not over one-half of it.

Q. By whom were those salaries fixed?

A. By the Board of Directors.

Q. And how many composes the directorate?

A. If I am not mistaken it was seven, but I won't be sure whether he had seven or five.

Q. Did the treasurer receive any compensation?

A. The treasurer was Mr. Haines. Mr. Haines' salary of \$2,500 a year was paid for acting in capacity of president and treasurer of the company. 30

Q. Now did he have any other resources from the company outside of his salary?

A. None whatever.

Q. Was he allowed travelling expenses?

A. No, he was not.

Q. Did he pay his own travelling expenses from his salary?

A. I presume so.

Q. Do the books disclose whether or not any travelling expenses were allowed him?

A. They do not.

Q. Do you know where the books are now?

A. I presume that they are in the possession of Wilson & Carr. I know they are.

10 Q. Up to what time were they in your possession?

A. Up until the 19th of November, 1914.

Q. And then they passed from your possession to whom?

A. They passed from my possession to Mr. J. Mercer Davis, who was the receiver.

Q. The same gentlemen who was a witness here last week?

A. Yes, sir.

20 Mr. Reilly. Is it conceded that the books cannot be produced?

Mr. Sexton. I do not know. I do not concede that they could not have been produced.

Mr. Reilly. I think we had that discussion once before.

30 The Court. No, a general statement has been made that the books were so many and so voluminous that they could not be produced. That is the only statement on the record.

Mr. Reilly. Will that be conceded by you, Mr. Prosecutor, to be a fact?

Mr. Sexton. No.

Mr. Reilly. Then you want us to prove that the books were subpoenaed and they are not here?

The Court. Is it a fact that the books were subpoenaed?

Mr. Reilly. Yes, sir; and Mr. Carroll gave the reason that they were not here, the State's own witness, 10 and the state itself, I think, has subpoenaed the books.

The Court. I think it is stated on the part of the State that a certain paper, namely, an inventory of some sort, should go in without the production of the books.

Mr. Sexton. No, without the production of the original

The Court. And I think Carroll did state that the 20 books were so many and so voluminous that they could not be produced.

Mr. Reilly. I have no doubt the State has subpoenaed the books, just as we have.

Mr. Sexton. The way it came about, you asked me if I would concede that you could not get the books here. I would not do that.

30

The Court. I understand the actual status of this company is based upon a certain paper, namely, an inventory and the expert accountant's report.

Mr. Reilly. I think I have accounted for the absence of the books, if your Honor please.

Q. I show you a paper, Mr. Roberts. Did you ever see that before?

A. I did.

Q. When?

A. I compiled it.

Q. From what?

10 A. From the books of the company.

Q. Is it a true statement—

The Court. Mr. Sexton, is there any objection to this paper going in?

Mr. Sexton. No, I don't object to it.

The Court. Let it be marked, if that be so.

20 (Paper marked Exhibit D 1.)

Q. Is that a true statement taken from the books of the company upon the day of its date?

A. It is.

Q. Who kept the books?

A. I did, with the assistance of Miss Berry.

Q. Can you state offhand the amount of cash that was deposited in banks at the date which you made this extract from the books?

30 A. No, I cannot recall.

Q. Would this statement refresh your memory?

A. It would.

Q. Do you need it for that purpose?

A. I do.

(Paper Exhibit D 1 shown witness.)

Q. What amount of cash did the concern have on deposit on the date of that statement?

A. \$752.43.

Q. What was the value of your cuts, proofs, dies and so forth?

A. \$12,500.

Q. Your printed matter, catalogues and so forth?

A. \$7,500.

10

Q. Now upon what did you base the statement of value of those two articles?

A. Cuts, proofs and dies, I based them on what it cost us to compile them, have them made. In making dies there is considerable expense. Some dies are low priced and some dies or cuts—some will call them cuts and some call them dies—some cuts and dies will cost as high as \$5, \$6 and \$7 apiece.

Q. Then the figures you have in respect to those two items are based on actual cost?

20

A. Actual cost to us.

Q. And you allowed nothing for depreciation?

A. I did not.

Q. Can you say whether or not of those two statements or any individual item of them had to be replaced, whether or not these figures would represent what they would actually cost in the whole?

A. It does.

Q. What is your next item there?

A. Furniture and fixtures.

30

Q. And what did they consist of?

A. They consisted of the office furniture, desks and so forth, office partitions, shelving, show cases and all fixtures necessary to conduct a department store business.

Q. And what was the value thereof?

A. \$9,470.07.

Q. And how did you fix that value?

A. It was the exact cost to us.

Q. And what was the condition of those items, fixtures and furniture?

A. I considered them all in first class condition. Some that were placed in were comparatively new, especially some large show cases which we had, we bought I should say within two or three months.

10 Q. Then there was no depreciation?

A. We did not figure any depreciation.

Q. What was your next item?

A. And the next item is accounts receivable. That is the account which I say is on deferred payment for the stock; that is, the purchase of stock, as I explained before, on ten per cent. down and ten per cent. a month, and this \$6,271.90 is the amount outstanding on our books due us for unpaid stock subscriptions.

Q. Anything else besides that?

20 A. Yes, we had a merchandise inventory of \$24,435.32.

Q. What is your next item there?

A. Following the furniture and fixtures, accounts receivable.

Q. Accounts receivable? And by accounts receivable you mean what?

A. Subscription accounts, unpaid subscriptions; those subscribers who were purchasing stock on the deferred payment plan.

30 Q. And that amount is what?

A. That amount is \$6,271.90.

Q. What is your next item?

A. Merchandise; merchandise on hand or merchandise inventory.

Q. Now what kind of merchandise is that?

A. Well, that was the merchandise which any general or department store would carry.

Q. The jury would like to know.

A. I am going to explain. There were farming implements, groceries, furniture, jewelry, men's and women's clothing, hats, shoes and such material as that that you will find in any department store, in addition to the farming implements, which of course a department store does not carry.

Q. Then the store or stores contain everything in the line of groceries, clothing, agricultural implements and such things as you would find in a general department store? ¹⁰

A. It did.

Q. Where were the stores located?

A. We were 93 and 95 Federal Street, 102 Federal Street, and 18, 20, 22 and 24 George Street.

Q. Now the first named, how large a building was that?

A. A three story building, I should judge it was about forty to fifty feet front and probably about ninety to one hundred feet deep. ²⁰

Q. What was the floor capacity of each story, if you know?

A. Well, I wouldn't care to say. I never measured it and I couldn't very well say except approximately.

Q. Approximately.

A. Say it is about ninety feet depth and fifty feet front.

Q. Now was each store devoted to wares of the containing of wares sold and delivered? ³⁰

A. The largest part of each floor—of course we had our offices, we had some offices on each floor, our main or accounting office took up a small portion of the first floor: the president's office and board of directors'

room took up a small front portion of the second floor, and our advertising department about the same on the third floor.

Q. Now then what was the size of the building that you have secondly referred to?

A. 102 Federal Street?

Q. Yes, if that is it.

A. We have the second floor of the Scull Building, and I should say it was about thirty feet front and prob-
10 ably about the same depth as the other building, about ninety feet in depth.

Q. And you had one floor in that building?

A. One floor.

Q. And to what was that devoted?

A. That was groceries and furniture. It was divided up into two departments. One part of it was furniture and the other part was our grocery department.

Q. Now the next one, the last one that you referred to.

20 A. On George Street we had two buildings, 18 and 20, or one building, which was devoted entirely, that is, the first floor—we only rented the first floor of that building—to our agricultural implements, and that was a building of probably fifty by sixty.

Q. And you occupied the entire floor?

A. The first floor.

Q. And what variety or what was the variety of agricultural implements that you displayed?

A. Well, I am not well versed in agricultural im-
30 plements. I should say there were plows, harrows, engines and wheelbarrows and wire fencing and a lot of other material used on a farm, that I don't know the names of.

Q. Now then, the other one.

A. The other building, 22 and 24 George

Street, was our storehouse in which we stored our surplus stock, and that was a three story building, probably about twenty-five feet front by fifty feet depth, and that was filled with groceries. We had some groceries there. Our surplus stock of everything we carried in that building, groceries, furniture and I will say the surplus stock of all the goods we carried.

Q. And each floor contained to capacity those things?

A. Oh, yes.

10

Q. What is the next item you have there?

A. Horses, wagons and harness.

Q. How many horses were employed?

A. We had four mules.

Q. The same number of wagons?

A. Two wagons.

Q. What was the value of those?

A. \$1,352.15.

Q. How did you arrive at that value?

A. That is what they cost us.

20

Q. How long had you had the mules?

A. We had had one pair of mules probably twelve, thirteen or fourteen months before the 19th of November and another pair we bought in the spring of 1914.

Q. What is your next item?

A. Unexpired insurance.

Q. What do you mean by that?

A. Unexpired insurance?

Q. Yes.

A. Insurance is paid in advance. We take out 30 insurance for the year, we carry so much insurance, I forget what the amount was, practically \$28,000 or \$30,000 insurance. Of course insurance is paid by the year. At this period we probably had three or four or five policies, I don't recall how many; and for the unexpired term

there is a money value. We could cash this insurance in at any time if we want to give up the insurance, we could turn these policies in to the insurance companies and receive our rebate for the unexpired time.

Q. And what did that item amount to?

A. \$133.33.

Q. What is the next item?

A. That is all in the assets.

10 Q. Now what is the sum total of those assets?

A. \$62,415.20.

Q. Now who made that inventory and appraisal?

A. Do you mean the inventory of the merchandise and so forth?

Q. As you have read it. Who actually made it?

A. The inventory was made of the merchandise by the head of each department. He made an inventory of his department which he turned in to the office and the extensions were made in the office; that is, the
20 prices.

Q. Turned in to you?

A. Turned in to me and the prices of each one were set alongside of them and extensions and all clerical work done in the office.

Q. So that your total assets at that time were \$62,000 and some dollars?

A. That is right.

Q. Now did you go into the liabilities of the concern?
30

A. Oh, yes.

Q. Does that paper disclose it?

A. It does, in detail.

Q. What is your first item of liabilities?

A. Bills payable.

Q. Now what do you mean by bills payable?

A. Notes, any notes given, in bank or otherwise. I would like to explain.

Q. Well, explain.

A. In buying some farming implements they give a certain length of time but they take your note. Take for instance, you buy engines, you buy a certain make of engine, we give them a note when we buy an engine, I suppose for their own protection, for the amount of their bill, and when that bill becomes due we take care of the note. Instead of carrying an open account on the books 10 to the credit of the concern from whom we buy the things, they have a note which they can use as collateral, and we take care of the note when it is due.

Q. Well, do you call that a bill payable?

A. Bills payable.

Q. Irrespective of whether the note has matured or not?

A. Oh, positively.

Q. Have you any knowledge in respect to the maturity of those notes, as to when any of them were due? 20

A. At this time I couldn't say.

Q. Can you say whether or not any of them were due at the time that the statement is dated, the 31st of July?

A. I don't think that they were.

Q. Can you recall from your memory or otherwise when those notes were to mature?

A. I couldn't say.

Q. Or when they were given?

A. I couldn't say. It has been so long ago and I 30 have worked on so many figures since then, I can't recall.

Q. I suppose the books would disclose that?

A. They would.

Q. Did you keep a notebook?

A. Oh, yes.

Q. Well, now, what was usual in the giving of notes as to the time given?

A. Well, in the case I spoke of, in farming implements, the notes sometimes extended over a period of six months; that is, we would give a six months note.

Q. Was that usual or unusual?

A. It was usual in farming implements.

Q. And can you recall to what extent farming implements were carried as stock?

10 A. I can't quite understand that question.

(Question repeated.)

Q. I mean to what extent in value.

A. Oh, we had at this inventory, we were carrying around \$6,000 worth of farming implements.

Q. Then would the bills payable represent the farming implements stock to the extent that you have named, \$6,000?

20 A. No, this bills payable item on here is \$1,156. Now the bulk of the farming implements we had on hand was paid for, some of it paid for and some of it on open account, which would come in the accounts payable.

Q. What is the next item you have got there?

A. Accounts payable.

Q. Well, is the farming implement account included in that item?

A. Some of them.

Q. Can you tell to what extent?

30 A. No, I could not.

Q. What is the amount of that item?

A. \$22,733.13.

Q. Now explain to the jury what you mean by accounts payable.

A. Accounts payable are open accounts on our

ledger. That is, accounts which we owe to merchants from whom we purchase goods.

Q. And irrespective of whether they were due at the time or not, did you write in that item?

A. Oh, yes; this item includes all accounts, whether they are due or past due. If they are open on the books, no matter if they are only one day old, they are included in this.

Q. That I imagine is the peculiarity of expert accountants? 10

A. Oh, yes; that is a peculiarity of any bookkeeping, whether it is expert accounting or not.

Q. Well, are you prepared to say that the accounts to the sum you have indicated there were actually due?

A. Were actually due?

Q. And should be paid at that date?

A. I am not. They were not due.

Q. They were not due?

A. They were not due.

Q. Can you state what proportion of the figures 20 were not due?

A. I could not.

Q. Why?

A. If I had the books in front of me I could tell but I could not tell now what proportion of them was due or which was not due. But if there was any due it was a very small proportion of it.

Q. A very low proportion of it due at that time?

A. At that time, at the time of this statement.

Q. Why did you prepare that statement? 30

A. That was my usual custom; July 31st, was the end of our dividend period. Our dividend period was the 1st of February and the 1st of August.

Q. How many times each year while you were with

the company in the capacity that you have stated were accounts struck?

A. Twice a year.

Q. And when, what month?

A. The end of January, which would be the 31st of January, and the 31st of July.

Q. Do you know of any specific purpose for which that statement was used?

A. Yes, this statement—I will say yes.

10

Q. What?

A. This statement was used at the meeting—I don't recall the date of it—of our stockholders to ratify the board of directors in their transactions to transfer the assets and liabilities of the Linwood Haines Limited of America to the Linwood Haines of Camden Incorporated.

Q. Was the transfer made?

A. It was.

Q. And can you not recall the date of the meeting?

20

A. I cannot recall the date of it, no. If I am not mistaken it was sometime during the month of August, but I don't remember.

Q. Of what year?

A. 1914.

Q. Was it in the early part of the month or the latter part?

A. I would not dare to say.

Q. How many stockholders attended that meeting?

A. Well, I should judge at this meeting there were
30 probably three or four hundred stockholders, as near as I could judge.

Q. They voted?

A. Oh, yes. If I had my minute book here I could tell just exactly how many there were there.

Q. Have you got it?

A. I have not.

Q. Can you recall whether or not the vote was unanimous?

A. I think it was.

Q. Can you approximately state by what majority it was carried?

A. The majority was very large. I don't know how many votes were cast for it, because it was an enormous number of votes. The votes against it I think was something like thirty-one shares of stock voted against it. 10

Q. Did the carrying of that vote of the new proposition have any effect upon the minority that you know of?

A. Not at all.

Q. In no way?

A. In no way at all that I know of.

Q. You heard no expression of any members of the minority as to the situation?

A. I did not. 20

Q. Who read that statement to that meeting?

A. I think I did. It was my duty and I am fully of the impression that I read it.

Q. Now at the time that statement was made what have you to say in respect to the assets of the liabilities of the concern which was taken over?

A. I don't quite understand your question, Mr Reilly.

(Question repeated.)

30

The Court. With respect to what? It doesn't mean anything.

Mr. Reilly. I don't want to suggest.

The Court. No, you should not suggest.

Mr. Reilly. I ask him what he has to say in respect to the assets and the liabilities of the concern that was taken over.

A. The Linwood Haines of Camden Incorporated took over, as I testified, the liabilities and the assets of the Linwood Haines Limited as of July 31st, which was
10 this.

Q. Now then what was the condition of the concern as to its assets and liabilities? Which was the greater?

A. Oh, our assets greatly exceeded our liabilities.

Q. Can you from that statement tell us to what extent?

A. Yes, from this statement our assets exceeded our liabilities by \$38,526.02.

Q. You continued from that date down to the 1st
20 of November following as secretary and accountant for the new concern?

A. I did.

Q. You did not lose your familiarity with the books?

A. No, sir.

Q. Did you or did you not frequently go over them, the books?

A. Oh, yes.

Q. Did you keep in perfect touch between those
30 dates, July 31st and November 1st following, with the assets and liabilities of the concern?

A. I did.

Q. On November 1, 1914, what was the financial condition of the concern?

A. Well, I made no statement from my books on

that date but I will say that we were in as good condition, if not better, on November 1st than we were on July 31st.

Q. You were no worse off?

A. Not a bit.

Q. And you might have been better off?

A. I feel that it was.

Q. When did the concern first find itself in difficulties?

A. I never considered we were in difficulties.

Q. What do you mean, what kind of difficulties? 10

A. Well, financial difficulties, I suppose you refer to.

Q. Yes, but you did have difficulties?

A. Yes.

Q. Irrespective of the financial difficulties?

A. Which were forced on us.

Q. How?

A. The difficulties were forced on us by a certain few of the stockholders having a meeting and demanding that something be done. I don't know what the reason of 20 the calling of this meeting was.

Q. Do you know what they demanded to be done?

A. Yes, they demanded that we be thrown into bankruptcy or receivership of some kind.

Q. You know that to be so?

A. I was at the meeting and I know.

Q. Do you know how many stockholders were present at that meeting?

A. Oh, about twenty, I should say.

Q. Represented by lawyers? 30

A. Yes, by one lawyer.

Q. And who was he?

A. Mr. Davis.

Q. The present trustee?

A. No, his brother.

Q. His brother?

A. His brother was at that meeting.

Q. Do you know how many stockholders he represented?

A. No, I do not. I know it was some stockholders from down around Salem but how many there were I don't know.

10 Q. Do you know why—answer this yes or no—do you know why he voiced the sentiment, in the name of those stockholders he represented, that the concern be thrown into bankruptcy?

A. I do not.

Q. Did he state?

A. Not in my presence.

Q. Were you called upon for a financial statement?

A. I was not.

Q. Was anybody?

A. No; no one could give them one except myself.

Q. How did you come to be there?

20 A. I was sent for.

Q. By whom?

A. I don't know. I was in my office that day—I don't recall the day—it was in the morning around ten or eleven o'clock, and this meeting was being held at the Ridgway, and some one sent the colored porter from the Ridgway around to my office and said that I was wanted at the Ridgway House—gave me an inkling of what I was wanted for. Of course I went around.

Q. When you got there did they tell you anything?

30 A. I went there and I was surprised when I entered the room to meet eighteen or twenty of our stockholders; and they said they would like me to be there.

Q. Did they tell you what they wanted you for?

A. No, I was just to be there and take part in the meeting and answer any questions they wanted to put to

me. They asked me would I answer any questions that they wanted to put to me in regard to the condition of the books, and I said, "I certainly will."

Q. Were you asked any?

A. I was not.

Q. None whatever?

A. None whatever.

Q. As to the books or any other aspect of the company?

A. I was asked no questions regarding the financial conditions, no, sir. 10

Q. Now what date was that?

A. I don't recall the date. It was either in the latter part of October or the first week in November, I don't recall the date.

Q. How long was it before the bankruptcy occurred in days or weeks?

A. Probably three weeks.

Q. Did you report to your company or your directorate what had happened? 20

A. I did report to our president.

Q. Anybody else?

A. No.

Q. Well, in pursuance of your report what was done by your company?

A. Mr. Haines, if I remember correctly, called a meeting of the stockholders for the Y. M. C. A., the meeting he has spoken of.

Q. You mean the Y. M. C. A. building?

A. At the Y. M. C. A. building, yes. 30

Q. And what did he do?

A. Well, I was not at that meeting.

Q. You didn't attend that at all?

A. No, I was home sick at that time and I was not at the meeting, so I couldn't say.

Q. Did you furnish any statement of the financial situation at that meeting?

A. I did not.

Q. Were you called upon?

A. I was not called upon. Before the meeting I was sick for a few days and Mr. Haines had to get along without a statement except what figures he could peruse for himself.

Q. How many persons were employed selling
10 stock, Mr. Roberts?

A. Well, at which time?

Q. Oh, well, let's take the year 1914.

A. During the year, in the spring of 1914 we probably had twelve or fourteen men selling stock.

Q. Did Mr. Haines himself engage in the sale of stock?

A. No.

Q. At any time?

A. No, the only time that Mr. Haines would have
20 anything to do with the selling of stock was when some of the men would ask him to go with them around their route to look over conditions and advise.

Q. Did Mr. Haines during the entire period that you were accountant and secretary of the companies which you have named ever turn in any checks or moneys the increment of sale of stock made by him?

A. I hardly think so.

Q. Now when you received this Blatchley check of \$100 what did you do?

30 A. I turned it over to my assistant, Miss Berry, to record, as I stated before, in the cash book; and the check was then, after being recorded, turned back to me for making our bank deposit.

Q. In respect to Mr. Blatchley, did you do anything?

A. In respect to Mr. Blatchley?

Q. Yes.

A. Mr. Blatchley, the same as every other stockholder or purchaser of stock.

Q. Well, what did you do in respect to him and the check?

A. I acknowledged the check.

Q. How?

A. By letter; acknowledged receipt of the check for \$100 in payment of \$100 worth of preferred stock. 10

Mr. Reilly. Will the state produce that letter?

Mr. Sexton. We haven't got it.

Mr. Reilly. Did Mr. Blatchley look for it? He promised to.

Mr. Sexton. Mr. Blatchley is here. I don't know. He can speak for himself. 20

Mr. Reilly. Perhaps he has it. Have you that letter, Mr. Blatchley? Have you got the letter acknowledging receipt of your check for \$100?

Mr. Blatchley. If I have the Prosecutor has it.

Mr. Reilly. The same answer you made the other day? 30

Mr. Blatchley. Yes.

Mr. Reilly. Have you looked for it since you were here before, sir?

Mr. Blatchley. Yes, sir.

Q. (To the witness) Can you remember the contents of that letter?

A. I can't remember verbatim, but the synopsis of the letter was an acknowledgment of the payment of \$100, for payment of his subscription for \$100 preferred stock, accompanied by a bonus of \$200 of common stock, and that the certificates will be issued at the
10 earliest possible moment.

Q. Were the books of the company always open?

A. Oh, yes.

Q. To whom?

A. To any stockholder who would ask to see them.

Q. Can you recall any of the stockholders asking for an inspection?

A. I cannot.

Q. Did Mr. Davis ever approach you for the purpose of inspecting the books?

20 A. He did.

Q. Were they open to him?

A. They were.

Q. When?

A. In the early part of November, 1914.

Q. In that statement which you have there is the good-will of the concern quoted at any figure?

A. It is not.

Q. And the figures which you have related to the jury as representing the assets and liabilities represent
30 the true affair entirely, irrespective of the good-will?

A. It does.

Q. When did the good-will feature first come into existence in this case, or in the bankruptcy case, rather?

A. The first I heard of the goodwill feature coming into it was from the statement that Mr. Haines made

at the meeting of the Y. M. C. A. Although I was not there I understood that he made a statement that the good-will was worth so much money, but I never consider the good-will as an asset in my statement to the company.

Q. How did you consider the good-will?

A. I do not consider the good-will as an asset nor the stock issued as a liability. I considered one offset the other.

Q. So that that item, Mr. Roberts crept in when Mr. Davis' accountant took hold of the matter? 10

A. Yes.

Q. And do you remember what the good-will was placed at by them?

A. Only from Mr. Davis' evidence on the stand.

Q. That is all?

A. That is all.

Q. Did you on the books kept by you make any entry as to the good-will?

A. Yes.

20

Q. Good-will value appeared in your books?

A. Yes.

Q. What was that value?

A. If I recall right, about \$100,000.

Q. Now how was that offset?

A. It was offset by the amount of money of outstanding preferred stock.

Q. Did they balance?

A. They did.

Q. The two items?

30

A. Yes.

Q. What have you to say from your knowledge of the concern as to its solvency or insolvency on October 27, 1914?

A. We were solvent.

Q. So that if Mr. Haines did say that it was solvent on that date he told the truth?

A. He did.

Q. I understand you to say that you have been engaged in commercial business for fourteen or fifteen years?

A. I have.

Q. Have you knowledge of trades customs and trades rates?

10 A. Oh, yes.

Q. What does the trades custom fix as cash purchases?

A. Payment at any time where you are entitled to take your full cash discount.

Q. And what is the usual custom in reference to groceries?

A. Groceries are one week.

Q. And agricultural implements?

A. The agricultural implements run from sixty
20 days, ninety days and four months, and I have had them as high as six months.

Q. That is, such dealings are regarded in the trade as cash transactions?

A. Oh, yes.

Q. What as to clothing?

A. Clothing was sixty days.

Q. What as to other merchandise which you had there?

A. Some furniture was thirty days, some of it
30 was sixty days and some of it sixty days with a dating.

Q. What do you mean by sixty days with a dating?

A. For instance, we would buy goods in March or April. They would give a July 1st dating of sixty days.

Q. Beyond July 1st?

A. Beyond July 1st. They would make the bill due September 1st, subject to a cash discount of six and sometimes ten per cent.

Q. I suppose then the thing is regulated between the purchaser and the seller, isn't it?

A. Frequently.

Q. And such agreement as they enter into is regarded as a cash transaction in the trade?

A. Always.

10

Q. So conducted?

A. Always.

Q. What was the rule of your company as to time of payment?

A. We endeavored and in most cases paid our bills so that we were entitled to our cash discount.

Q. Can you tell us what proportion of your bills, your accounts payable there was represented by printing?

A. No, I cannot tell exactly, but—

20

Q. Approximately.

A. I think I can approximate; somewhere around \$800 or \$900 or \$1,000. I don't recall.

Q. And what was the trade custom between your printers and your company?

A. We have a special agreement and terms with the concern which was doing the largest part of our printing.

Q. Mr. Roberts, from your knowledge of the affairs of this company, being by reason of your duties as secretary and accountant and bookkeeper, can you say whether or not the purchase of \$100 worth of the preferred stock of this company was a good investment?

30

A. I would say yes. I bought stock myself. If

I did not think it was a good investment I would not have bought it.

Q. And about that time?

A. No, sir; I bought my stock previous, six or eight months previous to that.

Q. How much stock did you own?

A. I owned \$100 worth.

Q. Can you say whether or not the purchase of this stock upon the 27th of October, 1914, was a safe
10 and reliable investment?

A. Yes.

Q. Well, was it?

A. It was.

Q. Can you tell us the amount of business that this concern did in the year 1914?

A. No, I can't tell you what we done in 1914 for the reason that we were thrown into bankruptcy before the year had finished and before I had had a chance to compile any statement.

20 Q. It was thrown into bankruptcy on the 19th of November?

A. November.

Q. Can you tell what amount of business approximately it did between the first of January and that date?

A. Yes, I should say about \$75,000 worth, approximately.

Q. And for the year 1914 could you approximate it?

A. Well, that is what I was approximating.

30 Q. 1913, I should have said.

A. 1913?

Q. Yes.

A. For the entire year of 1913 I think we did a business of probably \$70,000 to \$75,000. Business started out better in 1914 than it had been in 1913.

Q. So that the business grew?

A. Yes.

Q. During the period it was allowed to propagate in 1914?

A. Yes.

Cross Examination.

By Mr Sexton.

10

Q. Can you give me an estimate, Mr. Roberts, of the amount of business done from August 1st to November 12, 1914?

A. I cannot.

Q. Would you say \$12,000 was an incorrect sum for that business?

A. From what date?

Q. From August 1st to November 12, 1914.

A. That is August and September?

Q. Those three months, yes.

20

A. And how much money?

Q. I ask you whether \$12,385 would be out of the way for that.

A. No.

Q. Your speaking of cash as understood in the trade, you mean between merchants who are dealing, do you not, wholesaler and retailer, for instance?

A. Yes.

Q. And those people who are in the same line of business?

30

A. I don't understand what you mean by that.

Q. I mean this: that a large manufacturing plant selling to you as a retailer and granting you terms of ten, twenty and thirty days, whatever it may be between them, you would say that a credit extended for ten,

twenty or thirty days or whatever the terms would be was a cash sale?

A. Yes, if there were a discount at the expiration of the thirty or sixty or ninety days, whatever it may be

By the Court.

Q. Does it invariably follow that there is a discount?

10 A. Generally; not in all cases.

By Mr. Sexton.

Q. What was the proportion referring to the statement that you have there of July 31st, what was the proportion of the bills past due?

A. Of this amount here, this open \$22,000?

Q. Yes.

A. I wouldn't care to say that.

20 Q. Well, why not?

A. I can't recall.

Q. You won't give us any idea at all?

A. I will not.

Q. Were there any bills past due at that time?

A. Probably so.

Q. Were there bills past due on October 26, 1914?

A. I can't say positively.

Q. Were there bills past due at the time that they were placed in the hands of a receiver?

30 A. I can't say that.

Q. Was there any resistance made to the placing of this firm in the hands of a receiver?

A. No, I don't think so.

Q. You considered it solvent at that time?

A. I did.

Q. You were an officer of the company?

A. Yes.

Q. Made no effort whatever?

A. No.

Q. To resist going into bankruptcy?

A. No.

Q. Didn't think it was up to you as a director and officer of this company to protect its stockholders?

A. Yes.

Q. Then why didn't you, if the company was solvent, resist the application for bankruptcy? 10

Mr. Reilly. I object. Here is a man who is an officer of the company. I think it is a matter in his discretion.

The Court. I am not sure that that is an incompetent question, in view of the fact that an adjudication of bankruptcy contemplates insolvency. One of the jurisdictional features under the action of bankruptcy is 20 that the particular concern is insolvent. I think it is a very proper question to ask why he as an officer did not at least inform the court that this company was not insolvent.

Mr. Reilly. I do not understand the bankruptcy law to go so far as that.

The Court. Oh, yes, there is a distinction between the bankruptcy law and the assignment law of this state. 30 One contemplates absolute physical insolvency and the other contemplates inability to pay obligations.

Mr. Reilly. I have some idea how easy it is to force an individual or corporation into bankruptcy, and

once the bankruptcy courts gets hold of a victim—and I say it without any disparagement—it never lets go until you apply a double acting jimmy to its grip. Now here is a man who is simply an accountant and a bookkeeper—secretary, if you will. He has a board of five directors.

The Court. He may give a perfectly good reason why he as secretary did not oppose this action, I don't know. It may be remote but it has a bearing upon the
10 question as to whether or not he actually believed this company was insolvent. The question will be admitted. The objection is overruled.

(Objection noted for defendant as ground of appeal.)

(Question repeated.)

A. I had no power as one director to resist the
20 application.

Q. Was there a meeting called of the directors after the petition for receiver was filed?

A. I don't think there was.

Q. Was there any action taken at all by the directors to resist this application for bankruptcy?

A. Not to my knowledge.

Q. You were secretary?

A. I was.

Q. If there had been you would have known?

30 A. Oh, no.

Q. It was your duty, as you say, to take down the minutes?

A. A meeting could be held without the authority or without the signature of the secretary.

Q. But you were a member of the board of directors?

A. I was.

Q. You would receive notice of the calling of any such meeting?

A. I would.

Q. You didn't receive such notice?

A. I did not.

Q. Then don't you know that no such meeting was held? 10

A. There was no meeting held to my knowledge.

Q. Would you call this transaction of buying farming implements and giving a note for six months a cash transaction?

A. I would, because the note is not an interest bearing note.

Q. Did I understand you to say there were no dividends paid at any time?

A. Of which company?

Q. Of either company. 20

A. Yes.

Q. Which company paid dividends?

A. Linwood Haines Limited of America.

Q. When?

A. We paid, I think, three different dividends. Our dividend period was every six months.

By the Court.

Q. That is, the concern that was incorporated on August 1, 1914? 30

A. No, that was the concern that was incorporated in February, 1912. We paid three different dividends.

Q. What did you pay it out of, the profits or capital?

A. Out of the profits.

Q. When were they paid?

A. They were paid in February, if I recall right, February, 1913, and August, 1913, I know positive'y those two and I am not sure whether we paid a dividend in February, 1914, or not.

Q. That was on the preferred stock?

A. Only on preferred stock, seven per cent.

10

Mr. Mr. Sexton.

Q. You were at the meeting of the members at the Y. M. C. A. building?

A. I was not.

Q. Do you recall any check that was deposited on the day that this check was deposited?

A. No, I do not. I could recall if I had my deposit slip or my cash book in front of me.

Q. You seem to be quite positive and clear about
20 this particular check.

A. Yes, I remember that check. I remember Mr. Richardson bringing that check in to me.

Q. Do you recall any other check at that time?

A. No, that is the only check that Mr. Richardson brought in to me that day. I had several checks that day in payment of merchandise, but what they were I can't say.

Q. As I understand it, you were employed by the Linwood Haines Company of Camden Incorporated
30 after August 1st; is that so?

A. 1914.

Q. 1914?

A. Yes.

Q. And they paid the salaries? That company paid the salaries?

A. Yes.

Q. How then is it that the Linwood Haines Company of America received this check?

A. The Linwood Haines of America and the Linwood Haines of Camden Incorporated after the consolidation was virtually one and the same thing. We had the same board of directors, the same management. The records were all transferred, the accounts on our books were transferred from the Linwood Haines of America to the Linwood Haines of Camden Incorporated; but we did not notify the bank to change the name of the account. 10

Q. You are quite positive, Mr. Roberts, that dividends were paid on the stock of the Linwood Haines Limited of America?

A. I am.

Q. And all the stockholders would receive a dividend at that time?

A. If they were stockholders at that time, stockholders in good standing at that time, full paid. 20

Q. This account that you spoke of of good will was carried in the ledger?

A. Yes.

Q. And as fast as a check came in for subscription to capital stock it was entered in the ledger?

A. The check was entered in the cashbook.

Q. And then eventually got to the ledger?

A. Posted to the ledger, to the individual account in the ledger.

Q. And as that check would be posted the opposite side would be posted charging it to goodwill; is that it? 30

A. No.

Q. How would you work that?

A. It would be charged at the end of the month,

making up our sales at the end of the month. I wouldn't make an entry for every item that came in, but make an entry for the amount of stock sold, not for the amount of checks coming in but for the amount of stock sold.

Q. Well, at the end of the month that was balanced?

A. Yes.

Q. What was your agreement with the printing company, the Sickler Company?

10 A. As to the payment of their accounts?

Q. Yes.

A. During the summer of 1914 we had intended not to do very much printing, not to get out very many catalogues on account of the dull summer season. Mr. Snyder, the representative of the Sickler Company, came over to us and had quite a long conversation in Mr. Haines' office between Mr. Haines and Mr. Snyder and myself; and we went over the matter with him and explained that we did not intend to do much printing that
20 summer, we thought we would wait until the fall; and he said, "Well, now, we are dull during the summer ourselves. Why not have your printing done now? And we are willing to wait for our money. We will give you time. We won't press you, we will give you as long a time as you want. We will give you three or four or five months if necessary, only we want to keep our men busy; therefore we would like to have your work." Now instead of holding off until fall under those conditions we gave them the work and that is the reason we had
30 such a large account with Sickler & Company.

Q. Would you classify that as a cash account?

A. Oh, yes, positively.

Q. I was about to ask you, Mr. Roberts, the common stock was the voting stock, was it not?

A. Both voting stock.

Q. Both voted?

A. Both voting stocks.

Q. They vote equally?

A. Share for share.

Q. The stockholders elected the board of directors?

A. They did.

Q. That statement that you refer to as being made on July 31st was made in order to find out what the assets were and turning it over to the new company; is that right? ¹⁰

A. Yes, and of course it was our regular closing time of our six months.

By the Court.

Q. Mr. Roberts, can you tell us what proportion of the \$22,000 bills payable or accounts payable were due on the 31st of July, 1913?

A. I couldn't say, no, without referring to our records. ²⁰

Q. Well, about what proportion?

A. Well, to be fair to myself I would not want to approximate it.

Q. Would the \$700 cash on hand or cash in bank have paid the current obligations due on July 31st?

A. All accounts that were due or overdue?

Q. Yes.

A. I feel sure they would.

Q. On the 27th of October, 1914, do you know what cash you had on hand in bank? ³⁰

A. No, I don't recall.

Q. Do you know what amount of accounts payable there were?

A. No, but I don't think there were any more than what they are on this statement.

Q. \$22,000?

A. About that.

Q. On or about the 27th of October, 1914, had any creditors to your knowledge been insisting upon the payment of their claims?

10 (Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. I have no recollection of any.

Q. Between July 31st and October 27th had there been any insistment on the part of creditors for the payment of their claims?

20 (Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. None but what was paid. If any one between those dates called my attention to the fact that their account was due and had not been paid, which was probably the case and probably had been overlooked by myself; and as soon as they would call my attention to it I would take care of it.

30 Q. Did Miss Berry report to you that certain creditors were insisting upon payment of their claims?

A. She probably did. I don't recall but she probably did. During my absence from the office some one whose account, as I explained, might have been about due or past due and been overlooked by me, they have

probably called up on the phone and Miss Berry has probably answered the phone saying at the time that she would either call my attention to it or Mr. Haines' attention to it; and I will say that I think she did call my attention to several cases of that kind.

Q. And what was nature of the information that she gave you?

A. Of course I can't recall any names of any one that called up, but if this party or that party called up and called my attention to their account that it was a little 10 past due or asked if they could have a check, or if you can't pay it in full give us a check on account.

Q. Did Mr. Haines have the same access to the financial condition of the company that you did?

A. I should say not.

Q. Why?

A. Mr. Haines depended on me to report to him the condition of the finances of the company.

Q. He was the treasurer, was he not?

A. Mr. Haines was the treasurer. Mr. Haines 20 knew the condition of our bank balances.

Q. From time to time?

A. From time to time. I reported to Mr. Haines at the end of every month our cash account; that is, showing our receipts, where they came from, our disbursements, how it was disbursed, and showing the balance on hand.

Q. The general condition of the company?

A. The general condition of the cash.

Q. Did you not report to him oftener than once a 30 month?

A. No, not the general condition of the cash. That was my monthly report.

Q. Did you ever observe him examining the books oftener than once a month?

A. I have seen Mr. Haines look at the books many a time, but what he derived from them I couldn't say.

Q. No, I don't ask you that. You say that this check of Mr. Blatchley was received at your office, and where was it deposited, to what account?

A. To the account of Linwood Haines Limited.

Q. Of America?

A. Of America.

Q. And in what particular account, general ac-
10 count?

A. We only had one account.

Q. And it was checked against that account in payment of current bills?

A. We checked against that account for everything.

KATHERINE E. BERRY, recalled for defendant.

20

Direct examination by Mr. Reilly.

Q. Miss Berry, I understand you wish to correct a statement that you made here when you were a witness on Friday last as to the amount set forth as representing the goodwill of this concern. Is that so?

A. No, sir; it was not the goodwill, it was the stock.

Q. What was the stock?

30 A. I said that the amount of the stock sold was \$225,000, and I meant \$125,000.

By Mr. Peacock.

Q. Do you know whether or not Mr. Haines' father, who was vice-president of the concern, loaned the company \$1,000 just a few days before the bankruptcy proceedings?

A. He did.

Q. And was that loaned to the Linwood Haines Company of America or Camden?

A. It was loaned to the Linwood Haines of Cam- 10
den.

Q. And was it deposited in their account?

A. It was deposited to the account of the company, which was in the name of the Linwood Haines Limited of America.

Q. Deposited in the Linwood Haines Limited of America?

A. Yes.

By Mr. Sexton.

20

Q. Miss Berry, how much stock did Mr. Joseph Haines have in this company?

(Objected to as not proper cross examination.)

The Court. Yes, how is it material? Is it not proper cross examination.

(Question withdrawn.)

30

W. IRVIN MAY, sworn for defendant.

Direct Examination by Mr. Reilly.

- Q. Where do you live, Mr. May?
A. Camden.
Q. Do you know Linwood Haines?
A. Yes, sir.
10 Q. How long have you known him?
A. Since 1912, early in 1912.
Q. Had business transactions with him?
A. Yes, sir.
Q. To what extent?
A. I suppose between \$1,500 and \$1,800.
Q. And when was that?
A. Well, that covered a period—I have known him
from 1912 on to 1914.
Q. And he paid you?
A. Yes, sir.
20 Q. Do you know his reputation for honesty and
the observance of law in the community in which he and
you live?
A. I do.
Q. Was it good or bad?
A. Good.

Cross Examination.

By Mr. Sexton.

- 30 Q. Do you own any stock in the Linwood Haines
Company Limited?
A. Yes, sir.
Q. How much stock do you own?
A. I should say thirty-four shares, that is, \$340.
Q. \$340?

A. Yes, sir.

Q. Who did you hear talk about Mr. Haines' reputation for honesty and observance of law?

A. I heard a great many. I couldn't recall a third of them.

Q. All say his reputation was good?

A. Yes, I never heard anything to the contrary, but I did hear to the contrary, about it being a growing concern and about his being a remarkably good man.

10

By the Court.

Q. Are you related to him, Mr. May?

A. No, sir.

By Mr. Sexton.

Q. Did you ever take any interest in the Linwood Haines Limited?

20

(Objected to as immaterial.)

Mr. Sexton. To show his interest, that is all.

The Court. Yes, I hardly think it is worth while.

ARTHUR H. GRESIMER, SWORN for defendant.

30

Direct Examination by Mr. Reilly.

Q. Where do you live?

A. Woodlyn, New Jersey, a suburb of Camden.

Q. What is your business?

A. Printing business.

Q. Do you know Linwood Haines?

A. Yes, sir.

Q. How long have you know him?

A. About four years.

Q. Did you have any business transactions with him?

A. Yes, I have done considerable of his printing.

10 Q. Were you a stockholder in the Haines Company?

A. Yes.

Q. To what extent?

A. \$50.

Q. What was the extent of your business dealings with him?

A. I should judge about \$600 a year.

Q. And for how many years?

A. About three years, two or three years.

20 Q. Do you know the reputation of Linwood Haines in the community in which you and he live for honesty and the observance of law?

A. I think I do.

Q. Has it been good or bad?

A. Good.

Q. And is it good?

A. Yes, sir.

Cross Examination.

30 By Mr. Sexton.

What is your line of business?

A. Printing.

Q. You did business with the Linwood Haines Limited?

A. Yes, sir.

Q. What were your terms with the company?

A. Thirty days discount, cash.

Q. Were all your bills paid within thirty days?

(Objected to.)

The Court. You may make this gentleman your witness if you want to.

10

Mr. Sexton. He has gone into the facts.

The Court. Oh, no, he is simply called as a character witness. It is not proper cross examination.

Q. Who have you heard talk about Linwood Haines?

A. I have heard several people.

Q. What have you heard them say?

A. It has been my custom when I get a new customer to try and find out all I can about them, and I have talked with several business men and the conclusions has been that he was all right.

Q. What did you say your name was?

A. Arthur H. Gresimer.

Q. Have you got a claim against the Linwood Haines Company?

(Objected to.)

30

GEORGE HORACE ROBERTS, recalled for defendant.

Mr. Reilly. An omitted question, if your Honor please.

Direct Examination by Mr. Reilly.

Q. How long did I understand you to say you knew Mr. Linwood Haines?

A. Since about July, 1912.

Q. Do you know his reputation in the community in which he lives in Camden?

A. Yes.

Q. Was it good or bad?

10

A. Good.

Q. I mean his reputation for honesty and the observance of law.

A. Good.

No Cross Examination.

By Mr. Sexton.

Q. Mr. Roberts, that is your signature, is it not?

20

(Paper shown witness.)

A. That it.

JOSEPH H. HAINES, sworn for defendant.

Direct Examination by Mr. Reilly.

30

Q. How old are you, Mr. Haines?

A. Sixty-two.

Q. And where do you live?

A. Camden.

Q. And are you the father of Linwood?

- A. Yes, sir.
- Q. Were you concerned in this company of your son?
- A. Yes, sir.
- Q. As a stockholder?
- A. Yes, sir.
- Q. In any other way?
- A. Money loaned.
- Q. How many shares of stock did you have?
- A. I don't recall just how much it was. 10
- Q. Don't know just how much?
- A. No, sir.
- Q. Did you have any common stock?
- A. No, sir; no common stock.
- Q. Do you know what common stock is?
- A. Oh, yes, I know common stock.
- Q. Did you have any shares of common stock?
- A. That is what it was, common stock?
- Q. How many shares?
- A. I think it was \$50. 20
- Q. You think it was \$50?
- A. Yes.
- Q. Your son has always lived with you?
- A. Yes, sir.
- Q. Did you ever talk with your neighbors or your acquaintances about your son?
- A. No, sir.
- Q. Never have? That is all.
- By Mr. Sexton. 30
- Q. How many shares of stock would that be, \$50?
- A. Five.

DEFENDANT RESTS.

STATE'S TESTIMONY IN REBUTTAL.

CHARLES S. WAPLES, Sworn for the State.

Direct Examination by Mr. Sexton.

- 10 Q. Where do you live, Mr. Waples?
A. Philadelphia.
Q. You are connected with what firm?
A. William Waterall & Company.
Q. Are you familiar with the books of William
Waterall & Company.
A. Yes, sir.
Q. Did you have any business transactions with
Linwood Haines Limited?
A. We did.

20 By the Court.

- Q. What is your connection?
A. I am manager of the business.
Q. Did they have an account with you?
A. Yes, sir.
Q. How long did the account run?
A. It began in 1912—

30 Mr. Reilly. I object to this as immaterial for the
purpose of this suit. Here are bald charges here of
false pretence on the part of this defendant and what
this concern may have owed or what it may owe is abso-
lutely immaterial.

The Court. I presume it is offered for the purpose

of affecting the credibility of the defendant, as well incidentally as that of Mr. Roberts. The substance of your testimony is that these claims were paid within the times that were stipulated.

Mr. Reilly. Even in that aspect of the case how is it material?

The Court. I think it is. It tends to affect the credibility of the defendant and the jury might infer,¹⁰ under proper instructions from the court, that if he was in possession of certain knowledge on the date of his visit to Mr. Blatchley it might have an important bearing upon the issues in the case.

Mr. Reilly. I might suggest, if your Honor please, that the Prosecutor has not suggested that as a reason for the offer.

The Court. Well, I will ask him. What is your²⁰ reason?

Mr. Sexton. My reason is to show that they did not pay cash for the goods.

The Court. And that is within the issue?

Mr. Sexton. Yes.

Mr. Reilly. If your Honor please, I contend that³⁰ it is not a legal issue in this case.

The Court. Well, I have my notion as to what cash payment means and I will charge the jury upon it.

The objection is overruled and you may have an exception.

(Objection noted for defendant as ground of appeal.)

Mr. Reilly. Now, if your Honor please, may I ask upon what ground the court overrules the objection or the ground advanced by it or the ground advanced by
10 the Prosecutor?

The Court. Really I do not have to state any but I will. It is overruled on the ground that the Prosecutor hopes now to show that this company did not pay cash, and that is a situation directly within one of the issued under this indictment.

(Objection noted for defendant as ground of appeal.)

20

By Mr. Sexton.

Q. When did the account begin in 1912?

Mr. Reilly. I would like to interpose for the moment and ask the privilege of cross-examining this witness.

30

The Court. You may.

Cross Examination.

By Mr. Reilly.

Q. Do you know of your own knowledge when the account began?

A. Yes, sir.

Q. Of your own knowledge?

A. Of my own knowledge, as I was the—

Q. One moment, sir. Then you don't need the book to refresh your memory.

By the Court.

Q. Do you or don't you?

A. I only need the book to refresh my memory as 10
to details.

By Mr. Reilly.

Q. Answer yes or no, if you please.

A. Not to state when the account began. I know that.

Q. You do know that?

A. Yes.

Q. As to the items contained in the account, you 20
can't name them off without refreshing your memory from the book?

A. No.

Q. Who kept the books?

A. My bookkeeper.

Q. Not you?

A. No.

Q. Is there a single entry in this account of Haines
or against the Haines Company that you have made in
that book? 30

A. No, not one.

Further Direct Examination.

By Mr. Sexton.

Q. At whose direction were the entries made?

(Objected to as immaterial. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. I would say by carrying out my instructions as manager of the business.
10

Mr. Reilly. I object and move that the answer be stricken out as not responsive—he should say. He should be positive or definite.

The Court. Yes, the witness does say “I would say.” Do you know, Mr. Waples?

Mr. Reilly. May the answer be stricken out?

20 The Court. Yes, I think it should be stricken out as not responsive.

Q. At whose direction were the entries made?

(Objected to as leading.)

The Court. Oh, no, that is not leading.

Mr. Reilly. I will withdraw the objection. I think
30 you are right.

Q. Can you answer that?

A. I can answer it only in a general way. As manager of the business all records are made subject to my

approval and this account was opened subject to my approval.

Mr. Reilly. I move that that answer be stricken out as not responsive.

The Court. No, I will allow it to stand.

(Objection noted for defendant as ground of appeal.) 10

Q. Are you familiar with the handwriting of the bookkeeper?

(Objected to as immaterial.)

By the Court.

Q. Where is your bookkeeper?

A. She is at our office, your Honor.

20

Q. Where, in New Jersey?

A. In Camden.

Q. Camden, New Jersey?

A. Yes.

The Court. She might have been subpoenaed. Mr. Sexton, I will allow you to examine this man as to his knowledge of the account. I will further allow you, if he should say that he cannot remember without referring to his books, as to the several dates as to charges, I will allow him to refer to the books for the purpose of refreshing his memory. We are not trying a book account here. 30

Mr. Sexton. That is all I want.

The Court. And the rule of law is well settled on the subject.

By Mr. Sexton.

Q. This is your book account, is it?

A. Yes, sir.

Q. Your own business?

A. Yes, sir.

10

Q. Of which you are manager?

A. Yes, sir.

The Court. I will allow you to refer to that book only for the purpose of refreshing your memory, and counsel may have an exception.

(Objection noted for defendant as ground of appeal.)

20 Q. Can you fix the date when the account with Linwood Haines started?

A. In October, 1912. I can't give the date and the day, but it was in the month of October, 1912.

Q. Were you acquainted with Mr. Haines at that time?

A. I had met Mr. Haines about that date by solicitation. We had a letter from his firm asking for prices and I first sent one of our representatives to see him and the representative came back and made the request that I would go myself.

30

Q. Did you go?

A. I saw Mr. Haines and took his order for the initial order for paints that we supplied.

Q. On October 26, 1914, Mr. Waples, did the Linwood Haines owe your firm?

Mr. Reilly. I object unless there is a statement that he knows. It is a leading question.

A. I do. I do know.

Mr. Reilly. I move the answer be stricken out.

Mr. Sexton. I don't think it is a leading question?

The Court. Reframe your question to save time. 10
Strike out the question and answer and reframe your question.

Q. Did your business with Linwood Haines continue until October 26, 1914?

A. It did.

Q. What was the status of the business on that date?

Mr. Reilly. I object unless he knows. 20

Q. Do you know?

A. Oh, yes.

The Court. Oh, yes, he has said he knows.

Mr. Reilly. I think the Prosecutor ought to stop leading.

Q. What was it? 30

A. They owed us at that time \$592 and some cents. I don't remember exactly the odd cents.

Q. What terms did you have with Linwood Haines Limited?

A. Our terms on material such as we were sell-

ing Linwood Haines, our terms to them would have been sixty days cash and two per cent. for cash in ten days.

Q. Were the bills due or not? Were the accounts which you had with Linwood Haines due or not on October 26, 1914?

A. They were due.

Q. How long had they been due?

A. In September Mr. Haines' firm, or the Linwood Haines firm, made us a payment of \$100, which
10 settled the account to a date approximating the 1st of May, 1914, leaving the merchandise having been bought from that time until the date in October still open.

Q. What were the facts and circumstances of the \$100 payment, if you know?

(Objected to as immaterial.)

The Court. I don't know quite what the Prosecutor intends by that, but I will allow it to stand.

20

Mr. Reilly. Of course I have a general exception allowed me to the very general statement of what you would permit the Prosecutor to show? I do not want to be interrupting constantly.

The Court. All right.

(Objection noted for defendant as ground of
appeal.)

30

Mr. Reilly. And what I want to know now is whether or not that general exception will extend to this class of testimony, going a little outside.

The Court. I think you had better interpose your

objections. I am not at all annoyed by your making your objections.

(Question repeated.)

(Objection overruled.)

(Objection noted for defendant as ground of appeal.)

10

A. It was made on account of the indebtedness due our firm by their firm. Without any memorandum or anything I have no recollection of any special comments made at the time.

Q. Were there any subsequent payments made on account?

(Objected to. Objection overruled.)

20

(Objection noted for defendant as ground of appeal.)

A. On account, no. The subsequent payments were made for goods sold on cash terms only. Our account with the firm had reached—

Mr. Reilly. I move the answer be stricken out because it is not responsive. This witness is running away with himself.

30

(Question repeated.)

A. No.

Mr. Reilly. Is his answer stricken out?

The Court. Yes.

Q. Did you have any subsequent transactions with the Linwood Haines Limited?

The Court. That is to say, that answer is stricken out. I do not intend to bar this testimony at all.

10

Q. Did you have any subsequent transactions with the Linwood Haines Company?

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. We did.

20

Q. What were the terms, under what terms?

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. Cash on delivery of the goods.

Q. Why were the terms changed?

30

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. Because the account was past due and we did not intend to extend it further.

Q. Did you at any time bring the account to the attention of Mr. Haines?

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

10

A. I can't say that it was brought to Mr. Haines personally. We have written several times to the firm requesting payments. Whether the communication went to him or not I can't say.

Mr. Reilly. I move that this answer be stricken out.

The Court. I don't see why you object to that.

20

Mr. Reilly. He can answer that yes or no. He goes on to say never that he knows of presented to Mr. Haines, and then he goes on with a long speech.

The Court. The answer will stand.

(Objection noted for defendant as ground of appeal.)

Q. Was you answer that "I cannot say?"

30

A. I said that we had informed them by letter repeatedly and that we had been unable to see either Mr. Roberts or Mr. Haines when we would call their office to ask for payments. Then we advised them by letter that the account must be taken care of.

Mr. Reilly. I ask to have this answer stricken out as irresponsible.

(Objection overruled. Objection noted for defendant as ground of appeal.)

10

ELIZABETH E. BUNN, sworn for the State.

Direct Examination by Mr. Sexton.

Q. Where do you reside, Miss Bunn?

A. Philadelphia.

Q. Are you connected with any concern or firm?

A. The A. H. Sickler Company.

Q. What is your position in that firm?

A. Bookkeeper.

20 Q. Do you know whether your firm had any business transactions with Linwood Haines Limited?

A. Printing their catalogues.

Q. When did their account start?

A. October, 1913.

Mr. Reilly. One minute.

The Court. Yes, you may examine.

30

Cross Examination.

By Mr. Reilly.

Q. Are you testifying from your own knowledge?

A. Yes, it is my own writing.

Q. Are you testifying from your own knowledge

or must you refer to a paper that you have before you to refresh your memory?

A. Well, I should have to.

Q. You should have to?

A. Yes.

Q. So that you are really testifying from this paper?

A. Yes.

Q. And what does that paper purport to be?

A. The original entries. 10

Q. What do you mean by the original entries?

A. Entries made of charges against them in our ledger.

Q. Charges made when?

A. When the goods were bought.

Q. Is this an extract from your book?

A. This is the original leaf.

Q. Who put this in?

A. I did.

Q. Is this your handwriting? 20

A. Yes.

Q. You keep then a loose leaf system, do you?

A. Yes.

By Mr. Sexton.

Q. When did their account start?

(Objected to. Objection overruled.)

30

(Objection noted for defendant as ground of appeal.)

A. October, 1913.

Q. Did the account continue?

(Objected to as immaterial. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. Yes.

10 Q. How long did it continue?

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. October, 1914.

Q. What were the terms of payment?

20 Mr. Reilly. I object unless she knows.

A. Ninety days.

By the Court.

Q. Do you know the terms of payment?

A. Ninety days.

The Court. The objection is overruled.

30

(Objection noted for defendant as ground of appeal.)

By Mr. Sexton.

Q. Was the account at any time due or overdue?

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. The latter part.

Q. When? Give me the date when it became overdue. 10

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.)

A. In September, 1914.

Q. How much was overdue then?

(Objected to. Objection overruled.) 20

(Objection noted for defendant as ground of appeal.)

A. About \$1,400.

By the Court.

Q. And when was the \$1,400 due?

A. September.

Q. What date in September? 30

A. Well, we generally went from month to month, from the latter part of one month to the latter part of the next.

Q. Was the account finally paid?

A. No, sir.

Q. Never has been paid?

A. No.

Q. Did you make any personal demand upon Mr. Haines, so far as you know, for the payment of this bill?

A. Yes.

Mr. Reilly. If your Honor please—

10 Q. Whether you did or not.

A. Well, a letter was written from our place. I didn't write it.

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of appeal.

Q. To whom did you write?

20 A. Linwood Haines Company.

By Mr. Sexton.

Q. Did you receive an answer?

A. Yes.

Q. Did the answer close the payment of the account?

A. No.

30 Cross Examination.

By Mr. Reilly.

Q. How long did you say the Haines Company had been dealing with your concern?

A. Since September, 1913.

Q. And can you tell from your own memory what the volume of business between yourself and the Haines Company was between September, 1913, and October, 1914?

A. Not from memory, no.

Q. You can't from memory?

A. No.

Q. You have utterly omitted to state how much money you received from Linwood Haines during that ¹⁰ period, haven't you?

Mr. Sexton. He was not asked.

Q. Did you receive any moneys?

A. We certainly did.

Q. Do you know how much?

A. Not without referring to that letter.

(Paper handed witness.)

20

Q. How much?

A. I would like to have a pencil.

Q. Call off the dates and the amounts.

A. January 8, 1913, \$29; March 9, 1913, \$389,-
85; March 23, 1913, \$13.65; April 4, 1913, \$200; April
23, 1913, \$250; May 12, 1913, \$300; May 29, \$200;
June 9, \$250; June 30, \$100; July 16, \$100; July 29,
\$100; September 2, \$100; October 13, \$500; November
2, \$200.

30

Q. That was all in 1914?

A. Yes.

By the Court.

Q. Well, now, was it 1913 or 1914?

A. 1914. I said 1913; I meant 1914.

Q. Your account didn't start till September, 1913, did it?

A. October, 1913.

By Mr. Reilly.

Q. What does that aggregate?

10 A. \$2,732.50.

Q. Now can you tell from your statements during that period what your total sales were?

A. Yes, I will tell you in a minute. \$4,675.38.

Q. Now take the first item there, when was that sale made?

A. October 21st.

Q. When was the payment made?

A. January 8th the following year.

Q. I understood you to say there were how many
20 days' credit given?

A. Ninety days.

Q. Well, that payment was made within the ninety days, wasn't it?

A. Yes, sir.

By the Court.

Q. Did he pay in full?

A. Yes, sir.

30

By Mr. Reilly.

Q. How about the next?

A. December 29, \$13.65, paid March 23, \$13.65.

Q. That was within the ninety days, wasn't it?

Mr. Sexton. She said the latter part was the part.

The Court. Well, he may go on. Let him go on and examine.

Q. When was your next?

A. March 2, \$389.85, was paid March 9, \$389.85, according to contract.

Q. Do you know what that contract was?

A. Yes, that was a cash item of paper. That was 10 understood when the bill was presented.

Q. Now when was the last bill of goods bought?

A. The last bill of goods was bought October 26, 1914.

Q. And what did that amount to?

A. \$92.

Q. That was not paid?

A. No, sir.

Q. And they went into insolvency; did you know that? 20

A. I found it out later, yes.

Q. When was the next payment made previous to that?

A. November 2nd.

Q. How much was that?

A. \$200.

Q. And previous to that?

A. October 13th.

Q. How much?

A. \$500. 30

Q. And previous to that.

A. September 2, \$100.

Q. Now you don't know whether or not those last four or five that you have named were the subject of

special contracts made between your employer and Mr. Roberts?

A. Well, there was one item—

Q. Do you know now? Mr. Snyder, I should say, your employer Mr. Snyder, and Mr. Roberts, who is the secretary and accountant of this company. You don't know, do you?

A. No.

10 Q. Do you know whether or not the concern that you represent has put in a verified claim to the trustee in bankruptcy?

A. Yes.

Q. You know that that has been done?

A. Yes.

Q. Have you any knowledge as to the likelihood of your obtaining or your concern obtaining the amount due it in full?

A. No, we will receive a certain amount.

Q. You received one dividend of how much?

20 A. Twenty per cent.

Q. Have you had any information from the trustee as to your likelihood of receiving the balance?

A. No.

Q. You have not?

A. No.

Q. Have you communicated with him to find out?

A. I don't know.

Q. You don't know?

A. No.

30 Q. Then you didn't hear Mr. Davis, the trustee, say upon the witness stand here the other day that the creditors would be paid in full?

A. I wasn't here.

ALOIS SPIES, sworn for the State.

Direct Examination by Mr. Sexton.

Q. Mr. Spies, where do you reside?

A. New York.

Q. By whom are you employed?

A. I am the proprietor.

Q. What is your firm's name?

A. Spies & Lewis.

10

Q. Where is your place of business?

A. 23 East 26th Street.

Q. New York City?

A. Yes.

Q. Did you have any business dealings with Linwood Haines Limited of Camden?

A. Yes.

Q. Have an account with them?

A. Yes, sir.

20

By Mr. Reilly.

Q. Do you say you had business with the Linwood Haines Company?

A. Why, I sold him.

Q. You, personally?

A. Yes, sir.

Q. You personally sold him?

A. Yes; well, through mail.

Q. Who carried on a correspondence?

30

A. Yes, sir.

Q. Who carried on a correspondence?

A. I did.

Q. You personally?

A. Yes, sir.

By Mr. Sexton.

Q. You testified that you had an account with him?

A. Yes, sir.

Q. When did your account start?

10 (Objected to.)

The Court. If he knows he may answer.

A. August 31, 1914.

Mr. Reilly. Will your Honor pass upon my objection?

(Objection overruled.)

20 (Objection noted for defendant as ground of appeal.)

Q. What were the terms, if you know?

(Objected to. Objection overruled.)

(Objection noted for defendant as ground of
30 appeal.)

A. There were no terms specified.

Q. No terms being specified, when was the account due?

(Objected to.)

The Court. I will permit him to state how the goods were sold.

Mr. Reilly. He says there were no terms specified.

The Court. That is all nonsense, Mr. Reilly. We must not be bound by such a rule as that. There must be some terms.

10

Mr. Reilly. He has not answered.

The Court. How were the goods sold? Ask that.

Q. How were the goods sold?

(Objected to as leading. Objection overruled.)

(Objection noted for the defendant as ground of appeal.)

20

A. Well, the work is all done through orders. We make drawings and consequently that is supposed to be paid after it is delivered.

Mr. Reilly. I move that the answer be stricken out.

The Court. Yes. Don't you know how the payments are made?

30

A. Well, they are paid right away or thirty days after delivery, or about thirty days after delivery.

The Court. Then there were terms?

A. No, there are no terms. They never asked for terms and I didn't state any.

Q. What is your line of business?

A. Fashion drawing.

Q. Can you tell me on October 26th what the amount of your bill or account with Linwood Haines Limited was?

10 (Objected to. Objection overruled.)

Mr. Reilly. If your Honor please, there are no terms specified and I move that the terms be stricken out.

The Court. What do you think he is doing, giving this stuff to Haines & Company?

Mr. Reilly. I don't know, sir.

20 The Court. I am not going to allow any such testimony to be stricken out under such circumstances.

(Objection noted for defendant as ground of appeal.)

A. Linwood Haines owed me on October 27, 1914, \$352.

Q. Was that amount due you at that time?

A. Yes, sir.

30 Mr. Reilly. In view of the fact that I think it is illegal I am going to rest upon that.

STATE RESTS.

DEFENDANT'S TESTIMONY IN
SURREBUTTAL.

GEORGE HORACE ROBERTS, recalled for defendant.

Direct Examination by Mr. Reilly.

Q. Do you know the firm of Sickler? 10

A. Yes.

Q. The Linwood Haines Company had some transactions with them?

A. We did.

Q. Were there any special terms in regard thereto?

A. There were.

Q. What were they?

A. During the early part of the summer of 1914 we had made up our minds not to have much printing done during the summer on account of the— 20

The Court. Hasn't he already testified to that?

The Witness. I testified to the whole thing before, just exactly the same.

The Court. It is not proper rebuttal then?

Mr. Reilly. Surrebuttal as to this witness. 30

The Court. He has already testified to it. She says she knows nothing about it. He testified that he had a conference with Mr. Sickler, himself.

The Witness. Mr. Snyder, of the Sickler Company.

Mr. Reilly. I do not think she has testified to this. The witness has testified that it was not sold upon ninety days. I offer testimony for the purpose of contradicting that witness.

Q. What were the terms of that contract?

10 A. A verbal agreement between Mr. Snyder and myself regarding the payment for all the printing we would have done during the summer, which was that while they were virtually dull themselves they wanted enough work to keep their printers going.

Q. When were you to pay it? You have given us that before.

A. We were to use our own judgment, that is, in a reasonable time, three or four or five or six months if necessary.

20 Q. So that you could have had six months if necessary?

A. We could have had six months if necessary.

BOTH SIDES REST.

30 Mr. Reilly. If your Honor please, I renew my motion made at the close of the State's case for the reasons then advanced. We desire the direction of a verdict because the combination of testimony given by both the State's witnesses and the witnesses for the defence clearly indicate that the State has not borne the burden of

proof and established that any offence whatsoever has been committed by this defendant; and for the further reason, if your Honor please, that the indictment charges the defendant with receiving moneys for said Linwood Haines Limited of Camden Inc., and the proof as established by the check and the endorsement thereon shows that that is not a fact. The check itself, as well as the proof, indicates that the money was received and went into the hands of the Linwood Haines Limited of America. 10

The Court. The motion is denied.

(Objection noted for defendant as ground of appeal.)

CHARGE OF THE COURT.

20

Gentlemen of the jury: The fact that the indictment in this case—the evidence under this indictment—goes to you for final determination as to the facts by direction of the court, is no indication of the feeling of the court upon the facts. With them the court has nothing to do whatever. It is peculiarly your province to determine what the facts are in this case and whether those facts satisfy you beyond a reasonable doubt, as I shall presently define it to you, that the State has proven the guilt of this defendant under the allegations in the indictment. 30

The indictment in this case alleges that the defendant Haines being then and there president of a certain business concern known as Linwood Haines Limited, Incorporated, on the 26th day of October, 1914, (which

date has since been amended by direction of the court to the 27th day of October, 1914,) devising and intending to cheat and defraud one George W. Blatchley, unlawfully, knowingly and designedly did falsely represent and pretend and say to George W. Blatchley that the business concern in question known as Linwood Haines Limited, of Camden, Incorporated, was then and there in a sound financial condition, paid cash for all of the goods purchased by it at wholesale, was solvent, and its
10 share of stock were then and there a safe and sound investment, and did then and there supply to Mr. Blatchley and induce him to invest his money in said shares as a safe and reliable investment; the indictment then proceeding, as required under the statute, to negative those several allegations as to truth of the representations made and which are charged in the indictment to have been knowingly false to this defendant.

It is your duty under the law to determine what impression the words used by the defendant, if you find
20 they were used, were intended to convey and did convey to the mind of Mr. Blatchley, whether the defendant knew of the falsity of the pretences, if any pretences were made to Mr. Blatchley by the defendant; whether the representations were made with intent to defraud, if such representations were made; whether the pretences were calculated to deceive a person of ordinary prudence, if such pretences were made to the complaining witness, Mr. Blatchley; and whether the pretences, if made—and
30 you find beyond a reasonable doubt that they were pretences—were relied on by Mr. Blatchley so as to be the inducing cause of the transfer of his property, namely, as the evidence shows, the giving up of his check of \$100 to this concern in the circumstances.

Now, gentlemen, it will make no difference and it does as a matter of law, I charge you, make no differ-

ence whether Mr. Haines himself received the check in question. If he and Richardson were together at the home of Blatchley on the day in question and he aided, abetted and assisted that gentlemen in inducing Mr. Blatchley under the pretences which are alleged—assuming that you find them to have been made—and as a result Mr. Blatchley, relying upon one or all of them, gave up his money, the fact that Haines participated with Richardson in the offence charged—assuming that you believe beyond a reasonable doubt that it happened just 10 as alleged by the State—then Mr. Haines would be guilty as a principal as well as Richardson; although Mr. Richardson does not happen to have been indicted by the grand jury.

There are several questions which have been raised during the progress of this trial and discussed with you by the respective counsel, and it is my duty to define to you what in law certain terms involved in this case are. For example, the question of insolvency has been discussed; and the meaning of insolvency; and I charge 20 you that in the law of this state insolvency is the general inability to meet pecuniary obligations as they mature, by means of either available assets or an honest use of credit. The question of a sale for cash has been discussed, and is a question involved in this case. A sale for cash is a sale for money in hand; at least such is the general meaning of the term. But the defendant had a perfect right to show what the meaning in the trade of a sale for cash was, providing you ascertain from the evidence in this case that the impression that he intended 30 to convey to Blatchley on the day in question—if he did attempt to convey any such impression—was the one understood in the trade. Did he intend Mr. Blatchley to believe when he stated—assuming you find he did state—that this concern sold its goods for cash, that it was

the trade custom of selling on ten, twenty or thirty days, or did he intend to convey to Blatchley the idea that a sale for cash was a sale for money in hand? That is for you to determine as a question of fact, what impression did this defendant intend Blatchley to receive from his statement, assuming he made any such statement.

If you should determine—and as I say, it is for you to determine—that this defendant intended to have Blatchley believe that this concern sold only for cash in
10 the sense that it bought and paid for goods at wholesale, not on time but with funds in hand, then you would be justified in drawing the inference that the trade term such as the defendant offers as a definition for the sale for cash was not the term which he intended to convey to Mr. Blatchley on the day in question, if he intends to convey an idea at all on the subject.

Now, gentlemen of the jury, it is not necessary in this case for the State to prove the pretences alleged in this indictment in the exact words or in the precise words
20 of the indictment. Entire verbal accuracy is not required; but what is required is that the idea conveyed to the defendant and that as set forth in the indictment must be identical. In other words, if the defendant by the statements made by him—assuming that you find that they were made—conveyed to Mr. Blatchley the idea that this concern was in a sound financial condition, when he was in the possession of present facts from which he knew it was not in a sound financial condition, and that he had no right to take the money or property
30 of Mr. Blatchley in the circumstances; if he knew or conveyed the idea by whatever he may have said—or whatever you may find from the evidence he may have said—to Blatchley that the concern did not pay in cash as a layman, that is to say, a non-dealing merchant, or a retail purchaser would understand the term paid in cash,

but if what he did say was the idea that he paid in cash when as generally understood by such a man as Mr. Blatchley—and I am not speaking individually of Mr. Blatchley, but I am speaking of him as a class—would understand was a payment in cash, no matter what he may have said to convey that idea, if you find the idea was conveyed, the allegation in the indictment will be sustained, assuming you are satisfied it was made—by evidence produced to you—beyond a reasonable doubt.

And so with the other allegations in the indictment: 10
if the idea was conveyed, even though the express words were not used as alleged in the indictment, but the identical idea was conveyed, then the allegation in the indictment is sustained, assuming that you are satisfied by all the evidence beyond a reasonable doubt.

I will go further, gentlemen, and charge you this as a matter of law: if you believe from all of the evidence in this case that any one of these allegations alleged to have been the result of false pretence, and you believe it to have been made, was made and was believed 20
by Blatchley, and became a controlling factor or influence in inducing him to give up his money, and it was a false pretence, known to the defendant at the moment that he uttered it or made it, then this defendant could be convicted. In other words, gentlemen, it is not incumbent upon the State, the burden is not cast upon the State to prove all of these alleged false pretences.

Another rule of law is this: it is not necessary that the false pretence should have been the sole cause which moved the prosecutor to lend his name or to give 30
up his property. The influences which operate on a man in most cases are numerous and concurrent. A merchant, for example, who was induced to part with his goods might do it in the hope of gain, and that hope would be very potential; in fact, it cannot often happen that the

prosecutor's mind will yield to the false pretence exclusively and that no other motive will impel it in the same direction. It is sufficient if the jury are satisfied that the unlawful purpose would not have been effected without the influence of the false pretence added to any other circumstance which might have contributed or controlled the will of the injured party; to which I will add, without the influence of one or more of the false pretences alleged in this indictment, assuming you find
10 any one of them to have been made and to have been influential in inducing Blatchley to give up his money, and as made was knowingly false to this defendant at the moment.

Now, gentlemen, I am dwelling at some length upon the definitions of the law upon this subject because the case is of importance. I am going to ask you to disabuse your minds of the notion that a conviction in this case would be nothing more or less than that this court and this jury would be used as a collection agency. Counsel
20 in their enthusiasm have argued to you that the only motive of Blatchley was to get his money back and he hopes in some way to get it through a process such as this trial. Of course he cannot get his money back by an indictment and trial by traverse jury; and it is a matter of indifference to you and also to me what his motive may have been in going to the grand jury. He had a right to go to the grand jury if he as a citizen felt that the criminal statute had been violated and he had been made the victim. We are interested and concerned
30 solely, gentlemen, in having the laws adequately and properly enforced in this county; and if this defendant by his conduct at the time in question brought himself within the pale of the criminal law of this state, of course he is subject to prosecution, and we are simply here representing not Blatchley but the people of the county as

a whole, who are interested, and you as an arm of the court machinery, as I may call it, of this county, are also interested in seeing that the law when it is violated shall carry with it the penalty to the person who deliberately or knowingly brings himself or herself within the pale of such criminal statute.

I have said that it is no concern of yours or mine what Blatchley's motive may be, whether he hoped to make this machinery of the county a collection agency or not. If it to the slightest degree suggests to your mind (I mean the testimony of Blatchley—and you will remember that he did say on cross-examination that if he had gotten his \$100 back he would not have gone before the grand jury, I think he said)—if that statement suggests to your mind a reason for disbelieving Blatchley, in other words, if it to the slightest degree in your opinion bears upon the right to believe what he said was true, namely, upon the credibility of Blatchley, I do not withdraw it from your consideration and you may give it such importance and such credence as you believe under the circumstances it deserves; although it is my clear duty to say to you what I have already said, that the majesty of the law must be preserved in this county as well as elsewhere, and that is all we are concerned in, assuming that you are satisfied from all the evidence in this case beyond a reasonable doubt that the allegations of this indictment have been sustained by the State.

Now, Gentlemen of the jury, with reference to a false pretence it is my clear duty to say to you that if on the day in question the defendant was merely expressing his opinion in connection with the financial stability of this company and as an inducement for the complaining witness to invest, if what he said was a mere expression of opinion, of course it would not be a false pretence; although in reaching your conclusion as

to whether it was a mere expression of opinion or in fact a false pretence you would have a perfect right to consider that he was not a stranger to the concern in which he was inducing—if he did induce—Mr. Blatchley to invest. He admittedly was president of the company and also treasurer; and you very naturally would ask, I think I may say in comment, Who would be better informed in ordinary circumstances of the financial condition of a concern of this character than its treasurer or
10 its president? That is a mere passing comment suggesting to your mind a line of reasoning, but not with any idea of binding you to reach any conclusion which the suggestion might warrant; because as I have said to you at the outset, you are the judges of the fact in this case, and your recollection of the facts must prevail. No matter what the court or counsel may say as to the testimony of any witness in this case it is your recollection which must finally prevail when you come to deliberate upon the case.

20 Now, gentlemen, was there a fraudulent intent on the part of the defendant to defraud Mr. Blatchley of his money? A fraudulent intent may be determined by you as jurors and the inference of fraudulent intent must be determined by you as jurors from all the evidence in the case. On the day that the defendant went to Blatchley's home and it is alleged in this indictment the alleged false pretences, if you find them to have been made, were made, did he go for the purpose of defrauding Mr. Blatchley of his money? Does the inference follow from
30 all of the evidence in this case that he, knowing the exact financial condition of his company, realizing that it was unable to pay—and this is a mere illustration and a comment of the court—the inability of his company to pay its obligations due to wholesalers, devised the scheme to acquire new capital from men such as Mr. Blatchley

—and I am not using the word scheme in an offensive sense or a sense of moral turpitude—I may say plan—of going to Mr. Blatchley for the purpose of inducing him under the statements alleged to have been made—assuming that they were made, to give of his money to his company, which in turn should be used to liquidate the obligations already existing? Now if he knew on that day that his company was unable to meet current obligations, that in that sense it was not a solvent company, because of its inability for want of ready money to pay current obligations, I say if he knew that or if he knew that it was not a sound and safe investment as a stock investment, and with that knowledge induced Mr. Blatchley to give up his money, then you would be justified in drawing the inference of fraudulent intent. 10

You may consider it of some significance, in other words, you may not agree with counsel in their discussion of this particular phase of the matter, that a concern that was placed in the hands of a receiver by a federal court as a bankrupt concern on the 19th day of November, 1914, could have been a solvent concern on the 27th day of October, 1914; and you may consider the question arising under the evidence whether Mr. Haines' present declaration that when he went to Blatchley he honestly believed that the concern was solvent was an honest belief or whether he entertained any such belief. That is also a comment of the court and is not intended to do more than to suggest to you a line of reasoning if you see fit to accept it. 20

The defendant is presumed to be innocent, gentlemen, until proven guilty beyond a reasonable doubt. 30 The burden is cast upon the State to produce evidence which shall satisfy you beyond such reasonable doubt of the defendant's guilt; and that burden never shifts. A reasonable doubt is defined in the law to be that state of the

case which, after entire comparison and consideration of all the evidence, leaves your minds in that condition that you cannot say you feel an abiding conviction to a moral certainty of the guilt of the defendant. Now if you have such reasonable doubt as to the guilt of this defendant it need not be a reasonable doubt as to all of the allegations, as I have said to you; but if you entertain a reasonable doubt that any allegation in this indictment has been proven in the manner indicated and
10 required by law—that is, indicated by me a moment ago, namely, by evidence which satisfied you beyond such reasonable doubt—then you will resolve it in his favor and acquit him. But if you should have no reasonable doubt that there are certain allegations, as, for example, there was one allegation that is proven to your satisfaction beyond such reasonable doubt, as I have defined to you, then you would be justified in returning a verdict of guilty.

Now, gentlemen, you are expected to approach this
20 case wholly without any predjudice and without any sympathy one way or the other. These are episodes that do occur owing to, I may say, the frailties of human nature, and they are episodes which the criminal law is intended to protect the citizen against, assuming, gentlemen, you find any moral turpitude in this transaction whatever. I am speaking generally now and not specifically applying it to this case. So that you are not, as I say, to approach this case in deliberating upon it from the standpoint of prejudice because Blatchley has lost
30 his money and you are in sympathy with his desire, if he entertains such desire. I don't know whether he does or not— of punishing Haines as being responsible for his losing his money; but under your oaths you are obliged to decide this case wholly from the evidence, without any extraneous motives or matter being allowed to creep into

your deliberations. The case has been fully developed, gentlemen, and I may say has been well tried so far as the production of all the facts in the case and of which the case appears to be capable is concerned. So with that evidence it is your duty now to determine whether the allegations in this indictment are true and whether they have been proven to your satisfaction beyond a reasonable doubt.

There has been testimony given in the case as to the good character of the defendant, and he is entitled¹⁰ to the benefit of that testimony. If in connection with the evidence a reasonable doubt should be incipient, as I shall call it, in your minds, the fact that his good character is established would be put also in the balance and allowed to weigh in your minds, as a matter of law, I charge you, in arriving at such reasonable doubt. In other words, that bit of testimony must be considered by you. I do not mean to say, neither is it the law, that standing alone a man's good character is sufficient to overcome positive evidence of guilt. That is not so. It²⁰ is sometimes said that a man may have a bad character actually and the first time one knows anything about it is when he is arrested or when he is put upon trial. In making the foregoing statement, I am assuming, of course, that there has been positive evidence which satisfies you beyond a reasonable doubt of the truth of the charges in the indictment in this case, any one of which charges you believe Mr. Blatchley relied on—if he did rely on them—and as a result gave up his money.

I have been requested by counsel for the defendant³⁰ to charge you:

I. In arriving at a verdict you must confine yourself to the day named in the indictment, and if you find from the evidence that on October 26, 1914, the Lin-

wood Haines Limited, of Camden, Incorporated, was in a solvent condition, then you should acquit.

Gentlemen, I charge you that request with this qualification: that the date has been amended to October 27, 1914; and if you find that such a statement was made by Haines, namely, that the company was in a solvent condition, and as a result of that statement or as a contribution on the part of that statement Mr. Blatchley gave up his money and the company was in fact solvent, then he cannot be convicted. That is a matter of common sense as well as law. I may say to you further, gentlemen, that if you find that Mr. Blatchley invested his money not because of statements made by Haines but because of his visit to Camden, of course Haines could not be responsible for the loss. That would not be satisfactory proof and he would not be guilty under the allegations in this indictment. Of course I may say to you, in comment, that the mere visit of Mr. Blatchley to the concern in Camden and viewing the evidence, the physical conditions existing there, might or might not be competent to induce him to invest. It would not necessarily follow that he knew what the financial condition of the concern might be on the day that he visited there. It might have failed the next day and yet they might have had a magnificent plant there. I am simply citing that as a matter of comment, so that you will not be misled in the rule applicable to such cases. Of course if you should find that that was the thing that induced him to invest, Haines is not guilty.

2. If you find from the evidence that the complainant in this case knew of the financial condition of the Linwood Haines Limited, Incorporated, on the day named in the indictment, then you should acquit.

Yes, I think that is so. If Mr. Blatchley knew all about the financial condition of this company and on his

own responsibility invested this money, then of course any statement that is alleged to have been made by the defendant could not have induced him to part with his money, and I so charge you, in accordance with this request.

3. If you find from the evidence that the defendant made false statements, knowing them to be false, concerning the solvency of this company, before you can convict under this indictment you must find further and coupled with those facts, be convinced beyond a ¹⁰ reasonable doubt that such statements were made with the intent to deceive and induce the complainant to invest his money.

Yes, I will charge you that. But of course I have defined to you the method by which you may arrive at a fraudulent intent; and this request is charged you with the qualification already contained in the main charge as to the definition of fraudulent intent.

4. You should not convict under this indictment unless you are convinced from the evidence, beyond a ²⁰ reasonable doubt, that the defendant knew that the statements alleged to have been made were false and that he intended the complainant to rely upon them.

I charge you that request with this qualification: we cannot of course—jurors never can, courts never can—know what a man intends by an intimate inspection or observation of his mental process. We cannot tell what was in Haines' mind; we must be guided by his conduct and what he did, what he said. If he did say the things alleged then you would have the right to ³⁰ draw your inference that he not only knew the condition of his company on the day in question but intended that the statements made by him, if made—if you find they were made—should be relied upon by Mr. Blatchley.

5. If you find from the evidence that the statements alleged to have been made were mere expressions of opinion upon the part of the defendant, then you should acquit.

I decline to charge that except as I have charged.

6. Before you can convict under this indictment you must be convinced beyond a reasonable doubt that the statements alleged to have been made were actually made by the defendant and that the complainant relied
10 upon them in investing his money.

I decline to charge that except as already charged.

7. And if you find that the complainant made his investment relying upon any other statement, condition or any other source whatever than alleged in this indictment, then you should acquit.

I charge you that.

8. The mere fact of the proof of involuntary bankruptcy is not evidence that the Linwood Haines Limited, of Camden, was solvent on the day named in the indictment, but is only evidence tending to show the financial
20 status of the company on such day.

I charge you that. You may consider that, whether or not the question in connection with its being thrown into bankruptcy on the 19th of November. And this conversation alleged to have occurred on the 27th of October—is evidence from which you may draw the inference that it was insolvent on the 27th day of October.

9. In order to convict, you must be satisfied beyond a reasonable doubt:

- 30
1. That there was a false pretence.
 2. That such false pretence was made by defendant.
 3. That the defendant knew of the falsity of such statements.
 4. That defendant relied upon such statements.

5. An intent to defraud.

6. An actual defrauding.

I charge you that.

10. It is the right on the part of defendant to give evidence relating to his good character and reputation and to have the same considered by the jury, and if on such consideration there exists reasonable doubt of his guilt, he is entitled to an acquittal.

I charge you that.

11. If you find from the evidence that the defendant, to use the term of the trade world, was merely "puffing" the importance of the Linwood Haines Limited of Camden, then you should acquit. 10

I decline to charge that, except to say that if the conduct of the defendant on the day in question was merely an expression of opinion, as I have already charged you, he would be entitled to an acquittal; that is to say, if he used a mere expression of opinion and that induced Mr. Blatchley to invest, then he should not be convicted. 20

12. "Puffing" may be described to be the custom among tradesmen and commercial men to praise the value of their goods for the purpose of effecting a sale.

Well, I will charge that.

Of course, gentlemen, you must after all determine whether what was said there by Haines on the day in question was a mere expression of opinion or a positive statement of an existing fact. If any statement was made by Haines on that day involving the future condition of that company, that would not be a false pretence; it must have been of an existing fact and that he falsely made such statement; and if as a result Mr. Blatchley relied upon that and invested his money then he committed a breach of the Crimes Act of this state. 30

Finally, gentlemen, the case is submitted to you with a repetition of the statement that if you have any reasonable doubt of the guilt of this defendant you must resolve that doubt in his favor and acquit him; but if you have no such reasonable doubt your clear duty is to convict him.

- 10 (The defendant by his counsel prays a general exception to the whole charge of the court.)
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NEW JERSEY SUPREME COURT

10 THE STATE OF NEW JERSEY, Defendant in Error, vs. LINWOOD HAINES, Plaintiff in Error.	}	ON ERROR BRIEF
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The defendant, Linwood Haines, was indicted in the Monmouth Quarter Sessions Court, in the October
20 Term 1914, under an indictment which charged him with obtaining goods under false pretenses from one George W. Blatchley, and the false pretenses charged were that, Linwood Haines, representing the firm of Linwood Haines, Limited of Camden, Inc., was then and there in a sound financial condition, paid cash for all of the goods purchased by it at wholesale, was solvent and its shares of stock were then and there a safe and sound investment, and did apply to George W. Blatchley to invest his money in purchasing stock of the said concern, and did
30 sell stock to the said George W. Blatchley for the sum of One Hundred (\$100.00) Dollars with intent to cheat and defraud the said George W. Blatchley. And the case went to the jury and a verdict was returned by the jury, and the sentence as pronounced by the Court was that the defendant be committed to the County Jail for three months and pay a fine of Five Hundred (\$500.00)

Dollars, and to stand committed until the said fine and costs are paid.

The defendant assigns as error and causes for reversal, that the learned Court refused to permit the Plaintiff in error to introduce legal evidence in his behalf, showing that he did have sufficient money to pay the claims against his firm, which was objected to on page 189 State of the Case.

10 And because the learned Court permitted the defendant in error to introduce illegal evidence in its behalf, by showing conversations between Blatchley and Haines prior to the time alleged in the indictment, and that such conversations took place in Camden County, which were not within the jurisdiction of Monmouth Quarter Sessions, (Shown on pages 3 and 4 of the State of the Case.)

And also that the Court allowed the State to introduce testimony subsequent to the date alleged in the indictment, to wit, November 18th, as shown on pages 20 38, 39, 40, 41, 42, 43, and 44, of the state of the case.

And also that the State allowed the complaining witness, Blatchley to testify to a statement read by the defendant, Haines, at a stockholders' meeting subsequent to the indictment, (Shown on page 45).

The plaintiff in error contends that the State should not submit evidence either prior or subsequent to the date alleged in the indictment as to the false pretenses, because it would be a future transaction, and cannot be a statutory false pretense.

30 To constitute the elements of false pretense:

1. There must be an intent to defraud.
2. An actual fraud committed.
3. By means of false pretense.
4. Knowledge of the defendant of its falsity.

5. A reliance on the pretenses by the person defrauded.

6. And obtaining the property by the defendant or someone in his behalf.

7. An intent in defendant to defraud.

8. And an actual defrauding.

19 CYC 393.

As to intent.—It must be proven specifically; it cannot be implied from proof of the making of the pretense. Lack of intent is not shown by evidence that the defendant intends to apply the money, and in fact applied it to the object for which it was given. The pretense must be squarely negative. 10

19 CYC 446.

The word "pretense" is defined by lexicographers to be a holding out or offering to others something false or feigned—However broad or strong the expression, the statute does not mean to make any lie by which credit is gained, an indictable offense. It has always been held that the statute does not go to this extent, but that the true construction of the act renders some restriction necessary to the advantageous execution of the statute. 20

Thus it has always been held that a bare naked lie, not appealing to any supposed plausible circumstance calculated to deceive, is not indictable. It therefore involves contrivance—must refer to something calculated to deceive.

Vanderbelt's case, 3 Dutcher 334;

People vs. Williams, 4 Hill 9.

So always held that a misrepresentation in relation to a *future transaction* cannot be a statutory false pretense. It must be an *alleged existing fact*. 30

Rex vs. Goodall,

Russ & Ryan 461;

Commonwealth v Drew,

19 Pick. 185 and cases;
3 Dutcher 334;
Dillingham v State,
5 Ohio (N. S.) 280.
(State v Tomlin, 29 N. J. L. 15)

The defendant contends that the Court should dismissed the indictment at the close of the State's case, because the State failed to prove that the facts as stated in the indictment existed; and failed to prove that the
10 statements as made by Haines were untrue. Or if the statements made by Haines were untrue, that the complaining Witness, Blatchley, relied upon them; and that the State failed to prove that there was an intent to defraud upon Haines' part, or that Haines intended to divert the one hundred dollars, which he received from Blatchley for stock, but on the contrary, it was shown that Haines paid the one hundred dollars to the Linwood Haines, Limited, the purpose for which it was received, as shown by the endorsement on the check and offered
20 in evidence; and that they have failed to prove any fraudulent act on the part of Haines at all, wherein the testimony of the State failed to show that the Linwood Haines, Ltd. was not in a sound and safe financial condition at the time laid in the indictment.

Even the testimony of the State's witnesses, at the time of the alleged false pretenses showed that the Linwood Haines, Ltd. of Camden was solvent, and that they failed to show it had not paid cash for the goods purchased by it at wholesale. Whereas, the testimony of the
30 State's witnesses showed that the trade terms of thirty, sixty and ninety days were considered by the trade as purchasing "for cash"; and that the State failed to prove any one or all of the allegations as shown in the indictment.

"Every allegation in the indictment essentially descriptive of the offense must be proved as laid."

19 CYC 438.

"A variance between the description of the pretense in an indictment for obtaining property by false pretense, and the proof thereof is fatal."

19 CYC 438.

The proof must correspond with the charge.

State v Sharp,

53 N. J. L. 511;

State vs Harris,

58 N. J. L. 436.

10

On the contrary, the proof must correspond to the allegations of the indictment as to the person from whom the property was obtained.

19 CYC 441.

And the State failed to prove every element of the crime, and the law is as in the case of all other crimes, so in this.

The burden of proving every element of the crime 20 beyond a reasonable doubt is on the State, and a fraudulent intent is not presumed from the fact that the pretenses were false, and defendant knew them to be so, but the State must prove that they were false, and there was a fraudulent intent to defraud the person of his property.

19 CYC 441.

And in this case, the prosecutor of the Pleas elected that he would try the indictment on all of the pretenses, and the State must prove all of the pretenses beyond a 30 reasonable doubt before they can convict.

On a prosecution for obtaining money or property by false pretenses, the intent on the part of the defendant to defraud is the gist of the offense, and the prosecution has the burden of proving beyond a reasonable doubt.

And because the Court allowed the witness, James Mercer Davis, to testify from a statement which was not prepared by him and from which he did not have any knowledge as to its falseness or correctness, but which had been prepared by John Hines and Company, and of which the witness, Davis, did not have any knowledge. (Shown on pages 55, 56, 57 and 58 of the State of the case.

10 And because the check as introduced in evidence did not correspond to the date alleged in the indictment.

The next question—Because the Court charged the jury “that if such representations were made, whether the pretenses were calculated to deceive a person of ordinary prudence, and not whether Blatchley relied upon the statement.

One can not be indicted for making representations, which though false, could not have misled the person to whom they were made had he exercised common prudence and caution.

20 People vs. Williams,
9 N. Y.
40 American Decisions 258;
21 N. E. 252.

And the learned Court in its charge failed to charge fully upon the question of insolvency.

Because after stating what he believed to be the meaning of insolvency—to be the general inability to meet pecuniary obligations as they mature, by means of either available assets or an honest use of credit, he failed
30 to charge the jury that the evidence showed that this concern did have available assets at the time alleged in the indictment, so that the concern was not insolvent, as charged.

Because the Court charged that they would be justified in drawing the inference “that the trade term such

as the defendant offers as a definition for the sale for cash was not the term which he intended to convey to Mr. Blatchley on the day in question, if he intends to convey an idea at all on the subject."

And the proof shows that Haines did buy for cash under the trade terms, and the only conversation he had with Blatchley in regard to whether they bought and sold for cash is shown on pages 175 and 176 of Haines' testimony in the state of the case.

And the Court failed in its charge when it said ¹⁰ that, "It is not necessary that the false pretense should have been the sole cause which moved the prosecutor to lend his name or to give up his property;" and when he said, "I have said that it is no concern of yours or mine what Blatchley's motive may be, whether he hoped to make this machinery of the county a collection agency or not." And furthermore if you have such a reasonable doubt as to the guilt of this defendant it need not be a reasonable doubt as to all of the allegations." Whereas, the Prosecutor elected to try this case upon all of the ²⁰ allegations, and if there was a reasonable doubt as to one that should have been sufficient to acquit.

And because the Court failed to charge properly upon the question of evidence of good character, in which it said that there has been testimony given in the case as to the good character of the defendant, and he is entitled to the benefit of that testimony.

"On a prosecution for obtaining money by false pretenses, evidence of the defendant's good character is entitled like any other evidence to just such weight as, ³⁰ under all the circumstances of the case, the jury deem proper to give it."

State vs. Lynn,
51 Atl. 878.

The Court failed to charge the jury as to the questions of opinion or puffing the concern, "If you find from the evidence that statements alleged to have been made were mere expressions of opinion upon the part of the defendant, you should acquit."

"An expresion of opinion as to the evidence of the alleged fact will not constitute the offense of obtaining goods under false pretense."

10 State vs. Tomlin,
29 N. J. L. 13.

And because the Court decline to charge for the defendant," Before you can convict under this indictment you must be convinced beyond a reasonable doubt that the statements alleged to have been made were actually made by the defendant and that the complainant relied upon them in investing his money."

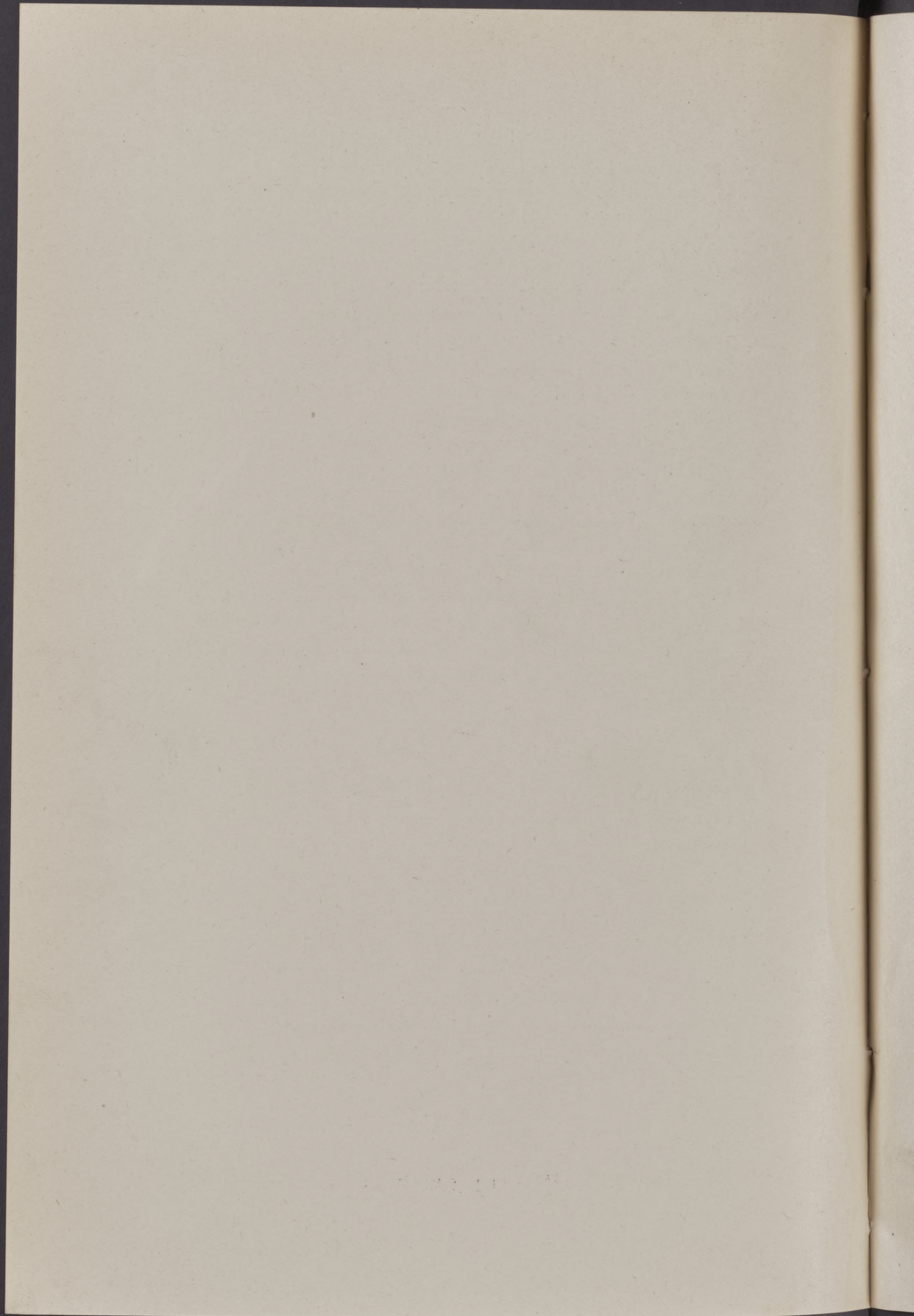
Therefore, to sum up, the defendant contends that this honorable Court should reverse the judgment of the Court below, because the State has failed to prove beyond
20 a reasonable doubt that the defendant Linwood Haines, was guilty of obtaining the money under false pretenses. And neither have they proven the necessary elements of the law of obtaining money under false pretenses. They did not prove that there was an intent to defraud, or that there was a fraud committed by false pretenses, or that the defendant knew of the falsity of any statement as made by him, and they certainly did not prove that the complaining witness, Blatchley, relied upon the statements as made by Haines, because he had been a
30 stockholder in this concern prior to the purchase of the stock in question, and had the opportunity to investigate the conditions under which he was purchasing this stock. And the testimony further shows that he had visited the concern in Camden, New Jersey, and after an investiga-

tion on his part, returned to his home in Freehold and later purchased the stock.

Haines certainly is not guilty of obtaining money under false pretenses. He was acting as an agent of a concern and sold the stock of that concern, and the check that was received from Blatchley was turned into the Treasury of the corporation which he represented, and that at the time the stock was sold, the stock was a safe and sound investment, and certainly was in a solvent condition as shown by the witnesses for the State. And¹⁰ that when the goods were purchased under the trade terms of thirty, sixty and ninety days, they were purchased under the trade term of "cash."

The defendant claims that the reception of certain testimony and rejection of other testimony, as shown in this cause, was prejudicial to the defendant, and that the charge of the Court was erroneous in law and inadequate in fact.

Respectfully,
ROBERT PEACOCK,
JOSEPH A. REILLY,
Attorneys and of Counsel with
Plaintiff in Error. 20



New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,

Defendant in Error,

VS.

LINWOOD HAINES,

Plaintiff in Error.

Indictment For
Obtaining Money
Under False
Pretenses.

10

BRIEF OF THE STATE OF NEW JERSEY.

The defendant, Linwood Haines, was tried and convicted before a jury in Monmouth County Quarter Sessions upon an indictment for obtaining money from one George W. Blatchley by false pretenses.

20

The facts briefly stated are:

George W. Blatchley, a farmer residing near Freehold, Monmouth county, New Jersey, was solicited by defendant, Linwood Haines, to purchase stock in a corporation known as "Linwood Haines Limited of Camden."

30

It appears that on the twenty-sixth day of October, nineteen hundred and fourteen, the defendant, Linwood Haines, and one Richardson, called at the home of Mr. Blatchley for the purpose of selling the stock of the Linwood Haines Limited to Mr. Blatchley. At that time Mr. Haines

40

represented to Mr. Blatchley that the Linwood Haines Limited of Camden, incorporated, was in sound financial condition, paid cash for all goods purchased by it at wholesale, was solvent, and its shares of stock were a safe and sound investment.

10 That, relying upon these representations, Mr. Blatchley purchased one hundred dollars worth of stock of said company; shortly after the purchase of the stock, the Linwood Haines Limited was placed in bankruptcy and the State of the Case shows that Linwood Haines Limited at the time representations were made to Mr. Blatchley was insolvent and did not pay cash for its goods, and in fact was being pressed for unpaid bills. Linwood Haines was President and Treasurer of
20 the Linwood Haines Limited.

The case is brought up on strict writ of error and also under Section 136 of the Criminal Procedure Act by certificate of the entire proceeding at trial.

30 There are no exceptions in due form to call for its examination in the former aspect, but the causes for reversal are identical with the Assignments of Error.

Numbers 1 and 2 require no consideration, being general in character, and if considered at all will be found without merit.

40 No. 3 and the various divisions thereof all relate to the refusal of the trial judge to direct a verdict of acquittal.

There is ample proof in the State's case of the material allegations in the indictment that the representations made by Linwood Haines were false and that Blatchley, relying upon such representations, parted with his property, and that the statements of Haines were untrue; that he knew them to be untrue and that the Linwood Haines Limited was insolvent at the time the stock was sold; that there was an intent to defraud. It was unnecessary for the State to prove all the allegations in the indictment, it being sufficient that Mr. Blatchley relied upon one of the allegations which was false and parted with his money. 10

Bishop's New Criminal Law, Vol. 2, par. 419. 20

State vs. Vanderbilt, 27 N. J. L., p. 317.

Nos. 4 and 5 are general and without merit, as a casual examination will demonstrate.

No. 6: Refers to testimony given by James Mercer Davis that he used a memorandum to refresh his memory. 30

This testimony was clearly competent, it being the same as was referred to by Mr. Davis in his statements made at a meeting of the stockholders of the Linwood Haines Limited held on November 18th, at which meeting Linwood Haines was present. (Line 4, page 55, of the State of the Case.)

This statement was not used for the purpose of being marked as an exhibit or reading it to the 40

jury, but simply as a memorandum to refresh the memory of the witness as to details of the Linwood Haines Limited, all of which Haines was familiar with, having heard Davis read them at the meeting held on November 18th.

10 No. 7: Evidently refers to a check produced by the complaining witness, George F. Blatchley (line 10, page 10, of the Printed Case) and which was evidence of the payment made of the One Hundred Dollars, which Haines received. The admission of this check was legal.

No. 8: I see no error in this Assignment.

20 No. 9: As to the meaning of involency, the Court's charge is in line with the decisions of this State. In fact, the Court charged the definition of insolvency in the words of the decisions of this State.

Wright vs. American Finance and Securities Company, 96 Atl. Rep., page 87.

Trust Company vs. Trustees, 67 Eq., page 602 at page 604; 60 Atl., page 940.

30 Nos. 10 and 11: Refer to representations of the sale for cash. The Court correctly states the law in this respect. A sale for cash is goods for money in hand.

Stewart vs. Scudder, 24 N. J. L., page 96-101.

40 See also Words and Phrases, Series 1 and 2, under title of "Cash."

No. 12: Relates to that portion of the Judge's charge wherein he states that entire verbal accuracy is not required as to false representations, and this charge of the Court in this respect is in line with the opinion of *State vs. Vanderbilt*, 27 N. J. L., page 328.

Nos. 13 and 14: Relate to the fact that it was not necessary for the State to prove all the false pretenses alleged in the indictment. 10

"There need be only one false pretense, though several are set out in an indictment; yet if any one is proved,—being such as truly amounts in law to a false pretense,—the indictment is sustained."

Bishop's New Criminal Law, Vol. 2, par. 419. 20

Nos. 16 and 17: Relate to the charge as to reasonable doubt and are contained in page 314, line 30, and 315 of the State of the Case, which as submitted is a sufficient and correct charge by the Court.

No. 19: The charge as to evidence of good character is found at page 315, line 10-30, State of the Case, which is submitted as a sufficient charge on that subject. 30

No. 20: Is covered by the charge of the Court in chief and again at page 319, line 15, of the State of the Case, wherein the Court states:

"As I have already charged you, he would be entitled to acquittal; that is to say, if he 40

used a mere expression of opinion and that induced Mr. Blatchley to invest, then he should not be convicted."

10 No. 21: The denial of the Court to charge this request was correct, as the charge in chief had already covered this subject and it was not necessary as a matter of law that all the statements should be proved by the State to have been relied upon by the complainant, it is sufficient, as above stated, if one of the statements was false.

Respectfully submitted,

CHARLES F. SEXTON,

Attorney and of Counsel

For the State of New Jersey,

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Defendant in Error.

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