New Jersey Court of Errors and Appeals.

Between JENNIE R. MORSE, ET AL., Complainants-Respondents, AGAINST METROPOLITAN STEAMSHIP COMPANY, Defendant-Appellant.	On Bill, etc. On Appeals from Chancery.

BRIEF FOR DEFENDANT-APPELLANT.

I.

Statement of the Case.

These appeals, six in number, taken by the Metropolitan Steamship Company, defendant below, are from orders or decrees of the Court of Chancery advised by Vice-Chancellor LANE, as follows :

(1) Restraining the defendant company from making payments to certain of its creditors, including the holders of its second-mortgage bonds.

(2) Restraining the holding of any meetings of the stockholders or directors of the defendant company.

(3) Admitting creditors of the defendant company as parties complainant in a suit brought by stockholders of the company in a representative capacity.

(4) Appointing a receiver for the defendant company under the general equity power of the court.

(5) Appointing a statutory receiver over the defendant company under the amendment of 1912 to Sec. 64 of the Corporation Act (P. L. 1912, Chap. 302).

(6) Confirming the appointment of such statutory receiver.

On behalf of the defendant-appellant it is respectfully submitted that each of the orders or decrees appealed from is erroneous and should be reversed.

1.

THE ALLEGED CAUSE OF ACTION.

A.

The Injury.

This action was caused to be instituted in 1913 by Charles W. Morse in the name of his sister Jennie R. Morse suing in her capacity as a small stockholder of The Metropolitan Steamship Company, a corporation of New Jersey (Record, pp. 211, 212, 215). It is a representative stockholder's action, brought in behalf of the complainant and " all other stockholders who may come in," in which the complaining stockholder claims to represent the interests of the corporation against the directors, on the ground that from fraudulent motives these directors are acting against the interests of the corporation. These directors are made defendants, and the corporation is added as a necessary party defendant (Record, pp. 5–20).

The original complainant had three shares of the defendant company's stock and was supplied by her brother with one hundred and thirty-four additional shares for the purpose of bringing this suit (Record, pp. 138–142, 153, 146–148). Including the other intervening stockholders (two in number), the complainants hold but one hundred and ninety-two shares of a total issue of 15,000 shares. The creditors of the company, who over objection were permitted to intervene as complainants hold $12,000 of the $1,427,291.78 of the defendant company notes bearing no interest and not due until November 15, 1919 (Record, pp. 94*b*, 126, 148).

The only injury to the corporation alleged in the amended bill of complaint is an injury resulting from a contract between the defendant company and the Pacific Navigation Company, also a corporation of New Jersey, and also made a party defendant (Record, pp. 13–15).

The sale by the Metropolitan Steamship Company of certain freight boats is alleged, but this is not alleged to have been a sale on unfair terms or to have caused any loss to the corporation (Record, p. 13).

The contract with the Pacific Navigation Company is alleged to be injurious for certain specific reasons (Record, pp. 13–15).

(*a*) Because by said contract the valuable passenger steamships Yale and Harvard were leased to the Pacific Navigation Company "for rental and upon terms that were inadequate and unfair and unduly favorable to the Pacific Navigation Company."

(*b*) Because the Yale and Harvard were thereby taken off their previous run between New York and Boston and transferred to the Pacific coast, thus losing an alleged valuable good will acquired by their previous operations.

(*c*) Because "said Pacific Navigation Company is not required by the terms of the said lease to maintain or repair said steamships, Yale and Harvard."

(*d*) Because by said contract, following the previous sale of the freight boats and Boston wharves, "the said defendant company has been deprived of all its assets, property and good will, and the business of the transportation of passengers and freight in interstate commerce or otherwise by water for hire theretofore carried on by it has been discontinued."

(*e*) That the defendant has thus "been denuded of its assets" and the stock of the plaintiff and the other stockholders has been made worthless by reason of the action of the defendant directors "who have acted in the premises without the authority, knowledge or consent of the stockholders of said defendant company."

B.

The Alleged Fraudulent Motive.

The second element of the cause of action set up in this amended bill of complaint is the fraudulent motive of the defendant directors for the making of the contract alleged to be injurious to the company (Record, pp. 8–15).

These directors are alleged to be "controlled" by the New York, New Haven and Hartford Railroad Company, which is alleged to have acquired and purchased or caused to be acquired and purchased "the great majority of the shares of the capital stock of the said defendant company, and caused the same to be transferred in the name of and to certain persons

and corporations then and at all times since and now dominated by the said Railroad Company."

The fraudulent motive of the Railroad Company and of the directors, who are alleged to be acting in its interest and to be its "tools," has a twofold character.

(*a*) It is alleged that the Railroad Company caused the incorporation of the Pacific Navigation Company, and dominated and controlled it, so that in causing the execution of the contract complained of, the Railroad Company was on both sides of the bargain.

(*b*) It is alleged that the Railroad Company desired to extinguish the competition of the Yale and Harvard with its railroad between New York and Boston by transferring them to the Pacific Coast. The improper character of this motive is alleged to be enhanced because it involved a violation by the Railroad Company of a statute of the United States known as the Sherman Anti-Trust Law.

C.

The Relief.

The Court was asked in the prayer for relief of the amended bill of complaint:

(*a*) To annul the contract with the Pacific Navigation Company, (*b*) through a receiver "to take control of the said Metropolitan Steamship Company and manage and direct its business," and (*c*) to issue injunctions to enforce the receivership (Record, pp. 18, 19).

2.

THE TRUTH AS TO THE FACTS ALLEGED.

A.

As to the alleged injury.

This case came to trial in January, 1917. The uncontradicted testimony revealed the following state of facts:

(*a*) Under its contract, dated October 10, 1910, which is printed at page 1777 of the Record, the Pacific

Navigation Company agreed to operate the Yale and Harvard between the California ports of San Francisco, Los Angeles, and San Diego for the Metropolitan Steamship Company, and to assume the entire financial risk of such operation for the term of five years. The Navigation Company agreed to pay all the expenses of operation except for insurance, which cost between $80,000 and $90,000 dollars a year, and to pay as guaranteed net earnings of the Yale and Harvard to the Metropolitan Steamship Company, monthly sums aggregating $345,000 for the first year, and $395,000 for each of the following four years.

That these terms were not unduly favorable to the Pacific Navigation Company is shown in the most practically convincing way by the circumstance that at the expiration of the contract by limitation, the Pacific Navigation Company was not willing to renew it on the same terms (Record, pp. 494, 454, 594).

(*b*) The facts regarding the alleged sacrifice of any good will of the previous business done by the Yale and Harvard proved to be as follows: The steamship business between New York and Boston around Cape Cod was entirely a summer business. The boats earned nothing above their operating expenses except during the short season of summer vacation travel. During more than half the year they were laid up at a dock, deteriorating faster than when in service, and being merely a source of expense (Record, pp. 486, 580–582, 1065–1066).

Since these boats had to earn all the fixed charges and expenses of the year in about two months, they failed to do this in the season of 1910, which was the only season of their operation for the defendant company. At the end of that season, the Metropolitan Steamship Company found itself without any hope of earnings until the next summer and with no resources to meet the interest on the first mortgage bonds due in the following January, or even the expenses of the winter, and of getting the boats again ready for sea, and of providing the large necessary insurance premium due in the following May (Record, pp. 247–249, 485–487, 437).

As against this certain prospect of bankruptcy, the contract offered by the Pacific Navigation Company absolutely secured to the defendant company funds sufficient to pay for the necessary insurance of the ships amounting to no more

than $90,000 a year (Record, p. 282), and the charges for interest and sinking fund under the first mortgage, amounting to $150,000 a year, leaving after the first year over $100,000 a year to apply upon other indebtedness of the company (Record, pp. 1069, 1777, 1791, 282).

(*c*) The contract *did* require the Pacific Navigation Company to maintain and repair the ships, and they were so maintained and repaired at its expense (Record, p. 1779: Exs. D 4, 6, 7-24-32).

(*d*) The said contract did *not* deprive the defendant company of "all its assets, property and good will." On the contrary it remained the owner of the Yale and Harvard which are in better condition and more valuable than they were when that contract was made.

Nor did the contract effect a discontinuance of the company's business of transportation by water. On the contrary such a business was profitably carried on for it by the Pacific Navigation Company, and a valuable good will was built up in an all the year round business of transportation, winter and summer alike, between the principal ports of the California Coast (Record, pp. 591–594).

(*e*) The said contract did *not* by "denuding" the company of its assets "render the complainants' stock worthless," or impair its value.

The original management of the Metropolitan Steamship Company, which is not alleged to have been in any way controlled by the Railroad Company, was responsible for the sale of the company's freight boats in February, 1910, and sold them because their operations were at the time, and had been for three years, a source of serious financial loss (Record, p. 2017). Indeed the losses from operation of these boats appear to have aggregated in the years 1907, 1908 and 1909 $313,973.50 (Record, pp. 2011, 2018, 2101–2).

The splendid steamships Yale and Harvard always constituted the chief asset of the Metropolitan Steamship Company.

They were its only asset when the present interests assumed the management of the Company's affairs, and they are as much its property to-day as they ever were.

When the said contract was made in October, 1910, the status of complainants' stock was this: The property of the company was actually worth less than it is now. On the

other hand, the company owed (Record, p. 2095) $2,000,000 of first mortgage bonds, notes bearing six per cent. interest for $500,000 due November 15, 1911, two other notes due in 1911 and 1912, aggregating $60,000, a demand note bearing interest for $95,506.19, and notes bearing no interest, due November 15, 1919, for $1,427,291.78, or a total of $4,164,156.54.

The latter notes provide that no dividend shall be paid on the capital stock until they are all paid in full (Record, p. 94*a*).

It is apparent that any expectation of return on the stock was in October, 1910, so remote that the stock had only a nominal value.

The actual results upon complainant's stock of the operation of the contract with the Pacific Navigation Company, which constitutes the sole cause of injury complained of, were these:

(1) Prevention of the extinguishment of plaintiff's stock, through foreclosure of the first mortgage on account of the company's inability to meet the next instalment of interest on the first mortgage bonds, and through the bankruptcy imminent because of the company's financial inability to pay the expenses of the winter lay-up, of getting the boats ready for sea, and of providing for the needed insurance (Record, pp. 2034, 485, 486, 437).

(2) When the contract with the Navigation Company expired on December 15, 1915, not only was the company's property improved in condition and value, but the debts of the company had been reduced by the earnings under that contract from $4,164,156.54 to $3,585,105.18 (Record, p. 2094).

B.

As to the Fradulent Motive.

Since the contract with the Pacific Navigation Company was indubitably beneficial to the Metropolitan Steamship Company, the management which authorized it cannot be legally required to defend their motives in sanctioning it. But the actual facts bearing on this element of the alleged cause of action may be briefly stated.

(*a*) The Railroad Company has nothing to do with the organization of the Pacific Navigation Company and never "controlled or dominated" it in any way.

The stockholders of the Pacific Navigation Company were all California people, the principal stockholder being Bennett and Goodall, a California concern, engaged in the shipping business (Record, pp. 590, 591). Capt. Goodall, whose father founded the old Pacific Coast Steamship Company and who had been himself in the service of that company, conceived after leaving it, quite independently of any Eastern interests, the plan of securing ships of the type of the Yale and Harvard to operate between California ports (Record, pp. 557–582). He had been making efforts to get these two particular boats for this Pacific Coast service since 1907, and his negotiations, which resulted in an offer of the terms embodied in the contract complained of, were in no respect caused or incited by the Railroad Company or by any Eastern interests (Record, pp. 577–588).

In dealing with Capt. Goodall and the Pacific Navigation Company, the management of the Metropolitan had no interest except to make the best terms possible for the Metropolitan. A reading of the contract (Record, p. 1777) affords convincing proof that the greatest pains in fact were taken to protect the interests of the Metropolitan.

(*b*) The records and books of the New York, New Haven and Hartford Railroad Company and the testimony of its highest officers establishes beyond controversy that that corporation never acquired any pecuniary interest directly or indirectly in the Metropolitan Steamship Company or in any of its securities, and that it had nothing to do with the making of the contract complained of (Record, pp. 1703–1727).

Edward D. Robbins, who doing one period, several years ago, was general counsel of the railroad company, giving to his legal services in this behalf a part of his time, did personally acquire a large amount of the evidences of indebtedness of the Metropolitan Steamship Company, but he was never a stockholder, director or officer of that company. As a creditor, dependent for the success of his large investment upon the success of the Metropolitan Steamship Company's business, he was properly consulted in emergencies by the Company's management, but there are absolutely no facts to indicate that he ever urged, aided or desired any policy or action which was not adapted to safeguard the earnings of the Company's business.

3.

Defendant's Supplemental Answer and the Conditions shown to exist at the time of trial.

This suit was commenced early in 1913. It did not come to trial until 1917. By that time conditions had so changed as really to render superfluous any inquiry into the truth of the allegations of the amended bill of complaint. Therefore, with consent of the Court, the defendants all filed a supplemental answer (Record, pp. 84–93) the allegations of which were indisputably established by the evidence.

(*a*) The contract with the Pacific Navigation Company had expired in December, 1915, after having proved very profitable (Record, p. 491).

(*b*) Since the Pacific Navigation Company, which had operated the Yale and Harvard skillfully and successfully was unwilling to renew its former guaranty of net earnings, it was employed to operate the boats upon the same route for account of the Metropolitan Steamship Company, but the earninge, owing to various causes for which the operators were not at fault, proved unsatisfactory (Record, pp. 547, 530).

(*c*) The individual defendants had ceased to be directors of the Metropolitan Steamship Company. Mr. Robbins had no longer any connection with the New York, New Haven and Hartford Railroad Company (Record, p. 546). Admittedly no one connected with the company's management had any further interest except to secure for the company the largest possible measure of financial success.

(*d*) The existing arrangements for the conduct of the company's business were advantageous, and had been approved by the stockholders without a dissenting vote (Record, pp. 531-533, 2089).

In June, 1916, when it had become apparent that the company's earnings were unsatisfactory the management of the company called a special stockholders' meeting to determine the future policy of the company. In accordance with the by-law governing the calling of special stockholders meetings, personal notice of this meeting and of the business to be transacted was given to every stockholder, by service of the notice printed on page 2099 of the Record. At this meeting

14,426 shares out of a total of 15,000 shares of the capital stock were represented in person or by proxy. 54 shares were represented by George A. Fernold an intervening complainant in this suit. Jennie R. Morse, the original complainant was also represented by B. C. Higley, who stated that he had deemed it unnecessary to secure her proxy (Record, p. 2083). Warren D. Chase, treasurer of the company, made a full report of the condition of the company's affairs and "that it seemed to its directors in the best interests of the company that an arrangement if possible should be made by which the operators of the boats should assume all the risks thereof and the Metropolitan Steamship Company should be certain of receiving therefrom at least sufficient income to pay its expenses and fixed charges" (Record, p. 2084). The treasurer also stated that the directors would be glad to receive suggestions as to the best arrangements to be made for the operation of these steamships from any of the stockholders, whether present or not, and to give them full consideration. Mr. Fernald thereupon said that he had nothing to suggest and did not know of any plan which would be of advantage to the company, and that he had no objection to offer to what was being done (Record, p. 2085). The meeting was adjourned "in order that the stockholders before final action by the company might consider and act upon any proposition that might be made or plan that might be developed."

Adjournments of the meeting were taken from time to time while negotiations were proceeding, first, with the Pacific Navigation Company, and later, with the Pacific Alaska Navigation Company (Record, pp. 2082-2090).

On August 8, 1916 (Record, p. 2089), the stockholders with no dissenting vote approved the execution of the then proposed contract with the latter company, and this contract, printed in the Record at page 2103, was executed to take effect September 1st, 1916 (Record, p. 2089).

Under this contract the Pacific Alaska Navigation Company, owning the Admiral Line, well established on the Pacific Coast, agreed to maintain and operate the "Yale" and "Harvard" for a term ending December 31st, 1921, with an option of renewal for five years to be exercised within two years, and to guarantee a net revenue to the Metropolitan Steamship Company of $30,000 a month, and

to pay to it in addition one-half of the net earnings of the boats in excess of that sum (Record, pp. 2103–2118).

Mr. Fernald, an intervening complainant, wrote for his banking firm, George W. Fernald & Co., a letter to Warren D. Chase, Treasurer of the Metropolitan Steamship Company, printed on page 506 of the Record, expressing pleasure over this operating contract and congratulating him " on making what seems to be a favorable contract."

At the stockholders' meeting on June 12, 1916, Mr. Fernald also had expressed the opinion that " the company ought not to undertake to run the boats itself, and assume all the risks of operation, and that it would be far better to make some arrangement similar to the one that had existed for the preceding five years, under which the operating agent would assume the risks of bad times and accidents and strikes and other contingencies that might interfere with the operation of the boats " (Record, p. 500).

When this case came to trial in January, 1917, this contract was in force and all payments under it to date had been promptly made (Record, p. 504).

The Metropolitan Steamship Company had promptly met all its obligations under its first mortgage, was not being crowded for payment of any other obligations, and was sure of being able before the fall of 1919 to extinguish all its debts falling due before that time.

On November 15th, 1909, the Company had issued to its stockholders in exchange for $1,500,000 of its own capital stock, notes for the same amount payable without interest ten years from date (Record, pp. 2063, 1761–1763). The income of the Company after November 15th, 1919, was under the above contract to be sufficient to pay six per cent. on the amount of those notes and gradually amortize them, so that it was reasonably to be expected that they could be refunded when due.

This was the general healthy condition of the affairs of the Metropolitan Steamship Company in February, 1917, when the Court below took the management of the Company's affairs out of the hands of its stockholders, directors and officers by injunctions and orders appointing a receiver and so introduced into its affairs a dire confusion which can only be remedied by the annulment of these injunctions and

orders upon this appeal. Without referring to matters not in the record, it may properly be pointed out: First, that the appointment of a receiver operated as a default under the first mortgage, the foreclosure of which is therefore now possible (Record, p. 1800, Section 2 (*d*)); Second, that the injunction against payment of the second mortgage bonds naturally rendered inevitable a suit to foreclose the second mortgage; Third, that the expenses of the receivership and of the litigation involved through it will be ruinously great.

4.

BRIEF HISTORY OF DEFENDANT COMPANY.

The foregoing statement is intended to be a complete statement of the really legal elements of this case; but since both the evidence and the Vice-Chancellor's opinions took a much wider scope, it seems that this Court may have its time saved by here inserting, even at the cost of some repetition, a brief connected history of the Metropolitan Steamship Company.

When Mr. C. W. Morse failed in 1907, the Metropolitan Steamship Company of Maine was one member of his great steamship combination (Record, pp. 155, 158, 171). The Company could not meet its obligations and had to be reorganized. Its first mortgage was foreclosed, and all its tangible property bought at the foreclosure sale by or for the reorganization committee (Record, pp. 673-680, 714, 716, 1730, 1761-1763). The present Metropolitan Steamship Company was organized for this committee under the laws of New Jersey, and said property was transferred to the present Company for its securities issued therefor, consisting originally of $3,000,000 first mortgage bonds, $500,000 of 6 per cent. notes due in two years and $3,000,000 of stock (Record, pp. 2062, 2063). One-half of the capital stock was soon exchanged for notes bearing no interest due in ten years, *i. e.*, on November 15th, 1919, a part of which were subsequently exchanged for a note for $30,000 due December 15th, 1911, and a note for $30,000 due September 24th, 1912 (Record, pp. 1730, 2015).

The Assets Realization Company by advances of money

required to carry through the reorganization came to own large amounts of these securities thus issued, including all but a few shares of the Company's capital stock, a large amount of the ten year notes, all the two year notes and a large amount of first mortgage bonds (Record, p. 719). Officers and representatives of the Assets Realization Company became officers and directors of the Metropolitan Steamship Company, and continued to manage its affairs from the fall of 1909 until March 5th, 1910.

The property of the Metropolitan Steamship Company consisted of two fine passenger steamers, the "Yale" and the "Harvard", which operated in summer between Boston and New York, but were laid up during the rest of the year, and of four old freight boats, which operated all the year between Boston and New York, some lighters, the equity in Union Wharf in Boston and incidental personal property (Record, p. 674).

The Reorganization Plan had not provided any working capital for the present Metropolitan Steamship Company, and it was so loaded with debts that it had no credit (Record, p. 526). The operation of the freight boats during the winter of 1909-1910 resulted in a substantial loss, to which was added the upkeep of the idle passenger ships, the "Yale" and "Harvard." This loss and this expense were met by loans from the Assets Realization Company upon demand notes of the Metropolitan Steamship Company (Record, p. 724).

The freight boats had been operated for several years at a serious loss, and the managers of the Metropolitan Steamship Company were anxious to dispose of them. The Assets Realization Company and other holders of Metropolitan Steamship Company securities were also anxious to sell their securities (Record, p. 683). Edward D. Robbins and Warren D. Chase, as associates, obtained the terms on which the boats and the securities could be bought, and arranged a business plan to follow such a purchase. Since the then Metropolitan Steamship Company had no working capital and no credit, it seemed entirely impracticable to use it as an operating company. A Company formed under the laws of Maine was to be made financially strong enough to own and operate on its own account the four freight boats, and to operate for the account of the present

Metropolitan Steamship Company of New Jersey the " Yale " and the " Harvard " under an equitable arrangement.

Mr. Robbins was to provide the funds for these purchases, and was to own the capital stock of the new Maine corporation and all of the purchased securities of the present Metropolitan Steamship Company of New Jersey, except the capital stock, which was to be the property of Mr. Chase (Record, p. 475).

This plan was carried out in March, 1910. The various sellers were represented principally by Mr. McKinnon; and Messrs. Robbins and Chase dealt with all the sellers at arms length, as strangers to all of them (Record, pp. 254, 727, 765).

As a result of the transactions then conducted Mr. Robbins acquired by purchase from various holders of the company's securities $683,895.21 of the total of $1,427,291.78 of the ten-year non-interest bearing notes; the $500,000 of the company's two-year notes due November 15, 1911; $375,923.14 of the company's demand notes (being all of such notes) and $1,000,000 of the $3,000,000 bonds secured by the first mortgage. And Mr. Chase similarly acquired 14,323 of the 15,000 shares of the company's capital stock (Record, p. 1750, p. 1759, p. 1761). The money needed to purchase these securities was supplied by Mr. Robbins and Mr. Chase received the shares mentioned by agreement with him as compensation for his services in the matter (Record, p. 224, p. 231, p. 475.) The $1,000,000 of bonds so obtained were used to carry out the purchase of the freight boats and the Union Wharf in accordance with resolutions adopted and contracts made by the defendant company before such purchase of said securities was consummated, and in accordance with the provisions of the company's first mortgage this property was thereupon released from the lien thereof and the outstanding bonds thus reduced from $3,000,000 to $2,000,000 (Record, p. 2016, p. 1823). Neither the sale of the freight boats or of the Union Wharf nor any action complained of by the complainants or questioned by the court below was begun or consummated while any of the individual defendants were directors of the defendant company or during the term of office of any of its present directors.

The new Maine corporation agreed to operate the " Yale " and " Harvard " during the summer season of 1910 for fifteen

per cent. of the net earnings, and for said amount agreed to furnish the operating organization and the expensive wharf in New York, and to advance temporarily the money necessary to fit the ships for sea, to insure the boats before they went to sea, and to meet the Metropolitan Steamship Company obligations under its first mortgage (Record, p. 1876).

The "Yale" and the "Harvard" were operated, as usual, during the summer season, but the total earnings were not enough to meet all the expenses and the obligations of the Company for the whole year, and at the end of the business season the Company found itself without funds to meet its first mortgage interest of $50,000 to be due January 1st, 1911, or the other expenses which had to be met before the boats could resume sailing in May, 1911 (Record, pp. 485–487, 437).

Under these conditions negotiations were commenced with Captain H. W. Goodall, a steamship man of the Pacific Coast, who had for some years been desirous of securing the "Yale" and "Harvard" to operate between San Francisco, Los Angeles and San Pedro. He finally agreed in behalf of the Pacific Navigation Company (a corporation which he with his California associates formed with sufficient capital) to pay for those boats after delivery to them at San Pedro, during a term of five years, a handsome monthly rental, yielding to the present Metropolitan Steamship Company a larger revenue than it could ever hope to obtain by the operation of the boats between Boston and New York, confined, as this had to be, to the summer season only (Record, pp. 1777, 565).

In order to secure the benefits of this contract, money had to be provided to fit the boats for sea and to relieve the Company from pressing indebtedness. Since the $500,000 due in 1911 could not be paid when due, the extension of this indebtedness had also to be provided for (Record, pp. 485–487, 2034).

Mr. Robbins felt that the Metropolitan Steamship Company securities which he held would be rendered worthless by a foreclosure of the first mortgage, unless the Metropolitan Steamship Company was enabled to get the benefit of this advantageous five year contract. As holder of notes due in 1911, whose value with accrued interest was $500,000, he offered to provide the Company with $250,000 in cash, if for a sufficient amount of these notes and this cash the Company would issue its five year six per

cent. bonds for $750,000 secured by a second mortgage on the "Yale" and "Harvard." The Pacific Navigation Company united with him in providing the necessary cash through the medium of The Pacific Company, a Connecticut corporation, for whose capital stock both of these parties subscribed and paid. The Pacific Company also acquired the $475,000 worth of notes due in 1911 and for these with accrued interest amounting to $25,000 and $250,000 in cash obtained the $750,000 of five year 6 per cent. second mortgage bonds (Record, p. 490).

The Metropolitan Steamship Company was thus enabled to obtain the benefit of its contract with the Pacific Navigation Company, under which in the five years it received about two million dollars from that Company and was able to retire through sinking funds $422,000 of first mortgage bonds, and $414,000 of second mortgage bonds and to pay certain judgments and retire most of its floating debt (Record, p. 2094).

During a part of the year 1916 the present Metropolitan Steamship Company operated the "Yale" and "Harvard" for its own account with unsatisfactory results. During the summer of 1916, Mr. Robbins, as attorney for the Company, negotiated a favorable contract for the operation of the "Yale" and "Harvard" by the Pacific Alaska Navigation Company, generally known as the Admiral Line, which contract after being unanimously approved by stockholders and directors was duly executed. Under this contract the Metropolitan Steamship Company receives an annual guaranteed payment of $360,000 and one-half of the net earnings in excess of that sum, which it is estimated will amount to at least $40,000 per annum more. Out of the $400,000 the Metropolitan Steamship Company has to pay insurance premiums of about $90,000, and the remainder is applicable to the payments of interest and the extinguishment of principal of its indebtedness (Record, pp. 2089, 531).

II.

The Grounds of Appeal Relied Upon.

While these grounds must both by reason of the number of orders or decrees now under review, and the nature of the whole case be amplified in the argument which is to follow, they are briefly stated as follows:

That the learned Vice-Chancellor erred in the following respects:

(1) In restraining the defendant company from paying its debts or from pursuing through the agency of its directors and stockholders the business for which it was organized and which it was conducting when such restraining orders were made.

(2) In appointing a receiver for the defendant company under the general equity powers of the court.

With regard to these orders it is the contention of the appellant that nothing in the evidence warranted a finding that the company's business was being conducted otherwise than in the sole interest of its creditors and stockholders, or in a manner which would not result to the greatest benefit of them all. In short there was no ground upon which the Court of Chancery was warranted under its inherent powers in interfering with the conduct of the company business by the officers and directors chosen for that purpose by a very great majority in interest of its stockholders, acting in the interest and for the benefit of all of them.

(3) In permitting the intervention of creditors of the company whose claims would not fall due for years in a suit brought by its minority stockholders in a representative capacity.

And this both because such creditors could properly have no standing in such a suit, and because the evidence had demonstrated that no proceedings by them against the company, or against its directors for an alleged breach of trust, were warranted.

(4) In appointing and thereafter confirming the appointment of a statutory receiver for the company (insolvency not being found or adjudged) under Chap. 302 of the laws of 1912,

when the evidence had established that its business, instead of being conducted at a loss and in a manner prejudicial to the interests of its creditors and stockholders, was in fact being conducted at a material profit and in a manner which had greatly reduced its indebtedness and was resulting to the great benefit of its creditors and stockholders alike.

III.

Argument.

The only ground on which the Vice-Chancellor finally rests the justification of a judicial interference which will wreck the defendant company, is that the legally constituted and competent management of a profitable business, not found to be insolvent, was likely to use its current earnings to pay interest-bearing bonds already overdue, instead of applying these earnings to the payment of notes bearing no interest, which would not fall due for nearly three years.

The Vice-Chancellor's controlling reason for desiring to prevent a method of business management which does not appear to be either unusual or illegal is that the benefits of such action would partially accrue to a stockholder of another corporation which held the Company's overdue second mortgage bonds, and that this person had previously bought lawfully issued securities of the Company from their lawful holders at such a price that, through payment of some of them, he had, as the Vice-Chancellor supposed, already got his money back from the defendant company.

And even this controlling reason was unfounded in fact, and rested, like other reasoning which together with this instance will be specifically discussed hereafter, on some absolute misunderstanding of business figures.

IV.

The Sherman Anti-Trust Law.

There are 2,209 pages in the printed record. It seems worth while, therefore, to endeavor to make it clear that the very large part of the depositions and exhibits which relate to the alleged violation of the Sherman Law by the New York, New Haven and Hartford Railroad Company needs no careful study by this Court.

1.

Even if proved, a violation of the Sherman Law by the Railroad Company in 1910 had no bearing in February, 1917, on the legal propriety of taking the management of the affairs of the Metropolitan Steamship Company out of the hands of stockholders, directors and officers who appeared to have at that time no interest in or connection with the Railroad Company. Even Mr. Robbins was then entirely unconnected with the Railroad Company. Moreover, nobody connected in any way with the Metropolitan Steamship Company, whether as stockholder or creditor, wanted the "Yale" and "Harvard" removed from the Pacific Coast, so that the alleged original desire of the Railroad Company to prevent their competition with its railroad, had in February, 1917, no practical relation to the affairs of the Metropolitan Steamship Company.

2.

The enforcement of the Sherman Anti-Trust Law is exclusively a matter for the Federal Courts.

Wilder Mfg. Co. vs. Corn Products Co., 236 U. S., 165, 174.
Pidcock vs. Harrington, 64 F., 821.
Southern Indiana Exp. Co. vs. U. S. Express Co., 92 F., 1022.
Blindell vs. Hagan, 54 F. 40; affirmed in Hagan vs. Blindell, 56 F., 496.

3.

If, as alleged, the Pacific Navigation Company had been owned and controlled by the Railroad Company, it might have been arguable that the contract with it sought to be annulled was in itself a violation of the Sherman Law. But it is now undisputed that the Pacific Navigation Company never had any stockholders except residents of California who were entirely unconnected with the Railroad Company.

4.

The removal of the Yale and Harvard to the Pacific Coast occurred in 1910. If there were ever any fear that this constituted an offense subjecting the Metropolitan Steamship Company to a penalty, the fear could no longer exist in February, 1917, because there can be no prosecution for such an offense except within three years after the offense was committed.

Act, April 13, 1876, C. 56, 17 Stat., 32.

5.

At the time when the contract with the Pacific Navigation Company was made, the only choice for the Metropolitan Steamship Company was between bankruptcy, if the Yale and Harvard remained in the East, and an assured net operating income amounting in five years to about two million dollars (Record, p. 1777). If the responsible management of the Metropolitan had rejected this offer of the Pacific Coast people, they would have been guilty of a gross breach of trust.

6.

It is absolutely proved that the Railroad Company never directly or through any subsidiary held any interest in the Metropolitan Steamship Company or any of its securities, or in any wise ever controlled, or sought to control its policy or any of its actions (Record, pp. 1703–1727).

7.

The complainants themselves introduced evidence to show that the negotiations for the purchase from the Assets Realization Company of its Metropolitan securities were based upon an understanding with Mr. Robbins that the Yale and Harvard were to continue to operate between New York and Boston (Record, pp. 733, 800). There is not one particle of evidence to show that if the Yale and Harvard had been able to earn enough in their short summer season to meet all fixed charges and expenses, they would not have continued to operate between New York and Boston (Record, pp. 2034, 294–5, 485–7).

They did operate on that route through the whole season of 1910, and every chance to make them successful was taken. The Metropolitan Steamship Company was relieved of the overhead expense of maintaining an operating organization. It was also relieved of the great difficulty and expense of securing a proper pier on the North River in New York (Record, p. 758). As a consideration for all this and for the agreement to advance money to finance its needs, the Metropolitan paid only fifteent per cent. of the *net* earnings of the boats. This 15 per cent. actually amounted to less than the company would have had to pay for any suitable pier in New York (Record, p. 1876).

Moreover, the operation of the boats was intrusted to Calvin Austin, the man most familiar with the Yale and Harvard, since he had been made head of his New England steamship lines (including the Yale and Harvard) by Mr. Morse, and since he had also been appointed by the U. S. Circuit Court in Maine as the operating receiver of the Yale and Harvard (Record, pp. 158, 993, 1000, 1058-1060).

8.

It is suggested that Mr. Robbins desired in the interest of the railroad company to have the Yale and Harvard removed to the Pacific coast. But even if without proof we assume this to be so, yet there is no evidence or indication, and no likelihood that he ever attempted to influence the manage-

ment of the company on this account *against its own interests*, which were identical with his own interests as its creditor.

Mr. Robbins had paid a large sum of money for evidences of indebtedness of the Metropolitan Steamship Company. The only way he had of getting any profit from his purchase, or even coming out whole, was by making the Metropolitan Steamship Company prosperous, so that it could pay its debts. In so far as he has advised or acted in connection with the company's affairs, it appears to have been in favoring and helping the obtaining by the Metropolitan Steamship Company of three contracts for the operation of its boats, which were one and all very advantageous to the company.

V.

False Issues.

It is fundamentally unjust to any party to a suit for the court to determine against it issues never properly raised in the suit. Since it could not lawfully be expected to meet such issues with evidence, it has never had its day in court on such issues. To determine against a party issues not properly raised is not due process of law and violates both the Constitution of New Jersey and the 14th Amendment to the Constitution of the United States.

1.

It is respectfully submitted that the opinions of the Vice-Chancellor (Record, pp. 2137 and 2159) show conclusively that precisely this error was eommitted by him. The Vice-Chancellor says (Record, p. 2138): that the complaint "is, that in the year 1910, Edward D. Robbins acquired *either for himself* or on behalf of the New York, New Haven and Hartford Railroad Company, or *for other interests*, control of the Company." This is a misapprehension. The only reference to Edward D. Robbins is in paragraphs 14 and 16, in both of

which his name is misspelled (Record, pp. 13-15). In paragraph 14 it is alleged that the Railroad Company "through its general counsel one Edward D. Robin" "entered into negotiations" with John W. McKinnon and "that the said Railroad Company through the agency of its said general counsel," acquired the great majority of the shares of the defendant company and caused them "to be transferred to corporations at all times since and now under the control of and dominated by the said Railroad Company."

In paragraph 16 it is alleged that "the said Railroad Company by its agents and particularly the said Edward D. Robin, its general counsel," caused to be incorporated in August second, 1910, a corporation under the laws of the State of Maine.

The Vice-Chancellor erred therefore in stating that any issue is raised by the pleadings relating to any acquisition of control of the Metropolitan Steamship Company by Edward D. Robbins "for himself" or "for other interests."

2.

The Vice-Chancellor goes on to say (in absolute error, as a simple reading of the pleadings shows) (Record, p. 2138), that the complaint is that Edward D. Robbins "has continued to control the company down to the present time; has used it solely for his own interests and to the detriment of the other creditors and stockholders; that the net result of his manipulations is that he has succeeded in getting out of the corporation all that he ever paid for its securities; has denuded the corporation of its assets; has practically caused it to discontinue business; has left the remaining bondholders, creditors and stockholders with only the Yale and Harvard to satisfy their claims; that in the course of his operations he has committed a breach of the "trust which he, as the controlling interest in the company, bore to the remaining creditors and stockholders."

The Vice-Chancellor concludes by finding the charges thus stated to be proven, thereby resting his action in the case upon a determination by him of issues clearly not properly before him, and which the defendants could not lawfully be required to meet.

3.

The fact that the above finding of the Vice-Chancellor is not supported by the evidence might well have been otherwise, since counsel for defendants was not called on to anticipate the necessity of meeting issues not before the Court. But it is submitted that the error of the court in this respect is enhanced by the circumstance that the Vice-Chancellor rests his findings on conjectures or assumptions based on the mere fact that Mr. Robbins did not testify as a witness (Record, pp. 2139, 2140).

Mr. Robbins was not a party to the suit. He was not a stockholder, officer or director of the defendant company. Enough is disclosed by the Vice-Chancellor to indicate that Mr. Robbins had personal reasons unconnected with the affairs of the Metropolitan Steamship Company for not volunteering as a witness after Mr. Swacker became counsel for the complainants.

It is also submitted that Mr. Robbins' deposition could as well have been taken by the complainants as by the defendants, and that so far as the issues raised by the pleadings were concerned, his testimony was not at all essential to the case, since it would have related entirely to the always unimportant and then obsolete issue concerning the Sherman Law.

What Mr. Robbins paid for lawfully issued securities of the Metropolitan Steamship Company in the hands of their lawful holder was not a subject of legitimate inquiry in a stockholder's or creditor's suit. Whether he made or lost money as a result of such a purchase was no concern of a stockholder or creditor. What arrangements Mr. Robbins made for obtaining funds from banks or any lender of money was no concern of a stockholder or creditor. Whether he or some one else held lawfully issued evidences of indebtedness when legitimately paid by the debtor was no concern of a stockholder or creditor. And certainly Mr. Robbins could not have reasonably anticipated that he was to be found guilty of a breach of trust whose existence he had never heard of, in a case to which he was not a party, and in which no such issue was before the court.

The Vice-Chancellor says that Mr. Robbins alone could

elucidate the record of bank transactions on March 5, 1910, which were in evidence. But they had no bearing on this case. The Vice-Chancellor say they are to him a "financial maze." They are nothing but a record of amounts deposited and checked out in various banks. Mr. Chase explained the substance of the business which necessitated these bank transactions. They were caused by the payment on the same day (1) of $3,000,000 for the capital stock of a Maine corporation, (2) by the payment by this corporation of $3,000,000 (not $1,500,000) for the freight boats, (3) by the payment for securities of the defendant company purchased of the Assets Realization Company, (4) by the payment for similar securities purchased of the Bank of North America, and (5) by the payment for similar securities purchased of the Hudson Navigation Company (Record, pp. 222, 237). None of these transactions constitutes any proper concern of the complaining stockholders or intervening creditors, for they involve no transaction with the Metropolitan Steamship Company. The only transaction at or about this time between Mr. Robbins and the defendant Company was the purchase of the freight boats and Union Wharf for bonds.

VI.

The assumed Trusteeship of Edward D. Robbins.

This matter would be no concern of the defendant company, were not the orders and decrees appealed from based upon it.

This trust is described by the Vice-Chancellor (Record, p. 2138), as being "the trust which he, as the controlling interest in the company, bore to the remaining creditors and stockholders."

1. As above pointed out, no issue concerning the existence or breach of such a trust was lawfully before the court.

2. It is undisputed that Mr. Robbins never became a stockholder of the defendant company. The books of the company

show this. The shares held by the Assets Realization Company all passed to the Chilmark Company, all of whose stock has from the beginning been beneficially held by Warren D. Chase. His testimony to that effect is clear and uncontradicted. He testifies that from the first it was contemplated between him and Mr. Robbins that the latter should have no interest in the capital stock of the Metropolitan Steamship Company (Record, pp. 517, 518, 475, 218-222, 237, 239, 280).

This testimony is supported by that of Mr. Nicholson (Record, pp. 425, 434).

It should be remembered that the total indebtedness of the company was over four million dollars, and as the ten-year notes provided that no dividend should be paid on the capital stock until the million and a half of these notes, not due until 1919, were paid in full, the capital stock had only a nominal value.

It is submitted that a man cannot be made a legal or beneficial holder of worthless stock against his will.

The Vice-Chancellor makes Robbins out to be a controlling stockholder of the company only by saying (Record, p. 2155) that Chase and Robbins "are *one.*"

There is no canon of law by force of which two individuals not incorporated can ever be one legal person. They may have many different legal relations in consequence of which the acts of one may affect the other, but they remain distinct legal personalities.

Warren D. Chase is *sui juris.* He is a lawyer and business man of evident experience and ability. As controlling stockholder, director and treasurer of the Metropolitan Steamship Company he is legally, upon the uncontradicted evidence, neither trustee nor agent for Edward D. Robbins.

Mr. Chase has been closely associated with Mr. Robbins in other business, and may be assumed to be friendly to him personally. But there is no rule of law by which a man becomes "trustee for a corporation its stockholders and creditors" merely by allowing or encouraging his friend to become an officer or director of the corporation. Much less does a man become a trustee for a corporation because his friend, however intimate, becomes a majority stockholder of that corporation.

3. The holder of a majority of the capital stock of a cor-

poration does not become by controlling the election of its directors through his ownership of these shares, a trustee for the corporation. The law is that his deciding vote for their election does not commission them to do his will, but commissions them to perform their own trust as directors.

Windmuller vs. Standard Distilliny & Distributing Co., 114 Fed., 491.

Page 494 :

> " I have not been referred to any authority which holds that one stockholder is in any sense a trustee for other stockholders, or that he is debarred from voting on his stock according to what he may conceive to be his interest, or in a way which may result in a benefit to himself, and which other stockholders may not enjoy. Directors, by whomsoever elected, are the representatives of all the stockholders, and, as such, are charged with the duty of administering the affairs of the company for the equal benefit of their *cestuis que trustent.* But the doctrine is new that the stockholders are trustees, one for another, or that an interest of one stockholder, which in the judgment of another stockholder may seem to be adverse to his own, can operate to prevent him from voting in his own stock as he sees fit.

Colgate vs. United States Leather Co., 73 N. J. Eq., 72 (Court of Chancery.

Pages 87-89 :

> " The *second* reason for declaring the consolidation agreement voidable at the instance of any dissenting stockholder, is based upon an alleged trust relation which is supposed to exist on the part of the directors and of the Central company as the majority stockholder controlling their election and indirectly their action and to exist towards the minority stockholders as a body or individuals. Cases from other courts are cited in which apparently such doctrine of trust relationship is declared, but our own decisions do not recognize any trust relation of one individual stockholder or any combination of individual stockholders acting only in their individual rights toward any other stockholder or combination of stockholders.
>
> " The general rule under our decisions is, that the individual stockholders are not trustees for each other,

but each may, as members of the general corporate body, exercise his individual right, and vote equally with other stockholders on the ratification of a contract in which he is interested, and ratification or adoption of the contract is valid, even if carried by his vote. *Hodge v. United States Steel Corporation* (*Court of Errors and Appeals, 1902*). I examined this question further in *Lillard v. Oil Paint and Drug Co., 70 N. J. Ex.* (*4 Robb.*), *197* (*1903*). This right of the majority (statutory or other) either to originally direct or to affirm contracts or other proceedings in which the directors or the majority stockholders are interested, is not, however, absolute, but is subject to the necessary qualification that the majority, although they may deal with the assets of the company, cannot so deal with them as to divide these assets, more or less, between themselves to the exclusion of the minority *Lillard v. Oil Paint and Drug Co., supra ; Menier v. Hooper's Telegraph Works, 9 Ch. App., 353 (1874).* By this rule, full practical protection, and all the protection they are entitled to, is given to the minority stockholders without resort to any principle of supposed trust relationship of one individual stockholder or any combination of such individual stockholders, who constitute a majority, toward those who do not act with them and constitute a minority. To make the majority of the stockholders either directly or through their directors trustees of the minority, and obliged, because they are in a majority, to conduct the business or affairs of the company as, in any respect, the special trustees of the *minority*, seems to me to be a misconception of the theory of trust relations. The directors elected, as they must be, by a majority, become, when elected, the trustees, not of the majority or of the minority stockholders, but trustees of the entire body of stockholders whether belonging to the majority or minority. In *Chase v. Vanderbilt, 62 N. Y., 307* (*1875*), this question as to the status of directors toward different stockholders or classes of stockholders arose, and Justice MILLER said *(p. 315)*: 'As the directors are under the same obligation to all the stockholders they represent, they cannot be charged by a plaintiff in an action with the duty of specially caring for and protecting the interests of one class of stockholders as against the others.' This theory that because directors were elected (as they must and should be) by the majority stockholders who control their action, they therefore become specially trustees of the *minority*, if logically followed out, would, as it seems to

> me, revolutionize the control of corporate bodies by removing it from the majority of the stockholders and imposing on the courts the necessity of controlling the business of the company by applying the rules and principles relating to trusts in the disputes concerning management arising wholly between different and shifting classes of stockholders."

4. It is apparently assumed by the Vice-Chancellor that Mr. Robbins was somehow a trustee for the corporation at the time of the sale to his agents of the four freight boats in February, 1910, several weeks before the securities were bought. But the officers and directors of the Metropolitan Steamship Company at that time were entirely independent of him, and were men of importance in the business community. They were officers of the Assets Realization Company, which by virtue of advances of a million dollars had a controlling interest in the capital stock of the Metropolitan Steamship Company and owned a large part of its unsecured indebtedness. They acted under the independent legal advice of Robert C. Morris, and Campbell Carrington was himself a lawyer (Record, p. 798).

There were other distinct negotiations carried on at the same time by Mr. Robbins, because his plans as a contemplating purchaser required him to consider them contemporaneously. There were four independent sellers ; and from the sellers' side the four negotiations were legally independent. Mr. Robbins negotiated with the Metropolitan Steamship Company for the purchase of their freight boats. John W. McKinnon was president of the Company, and the negotiations were therefore with him in that capacity.

Mr. McKinnon was also Stockholders' Agent of the Bank of North America, and Mr. Robbins' purchase of Metropolitan bonds from that bank was necessarily negotiated with him.

Mr. McKinnon was also President of the Hudson Navigation Company, and Mr. Robbins' purchase of bonds from that company was naturally negotiated with him.

Mr. McKinnon was also a Vice-President of the Assets Realization Company, and Mr. Robbins' purchase of Metropolitan securities from that company was naturally negotiated with him, with Mr. Shaw, its President, and Mr. Carrington, another Vice-President.

But in these several negotiations Mr. Robbins was dealing at arm's length as purchaser with the independent sellers, and was no more affected with a trust for one seller than for another (Record, p. 254).

It is suggested, as a matter of criticism, that the freight boats were sold by the original management because Messrs. Chase and Robbins so preferred. It is submitted that it is not a proper subject of criticism in a court of equity that a man preferred not to be on both sides of a bargain. Messrs. Chase and Robbins, in purchasing the freight boats, had enough to do to look after their own business risks as purchasers. They were in law and equity entitled to rely on the sense of duty, experience and ability of the directors and officers of the Metropolitan Steamship Company to look after the interests of that company as a seller.

Since under the laws of this State a man does not become a trustee for a corporation by holding the majority of its shares, he certainly does not become such a trustee, without actually acquiring such shares, by negotiating for their subsequent purchase in behalf either of himself or another.

5. It is suggested that Mr. Robbins in paying for the freight boats with first mortgage bonds violated some trust for other bondholders. But there is no rule of law by which one bondholder has any trust relation toward other bondholders. The American Trust Company, trustee under the mortgage, was the only trustee for the bondholders, and its action in releasing the mortgage on the freight boats is sufficient sanction for the transaction in the entire absence of any evidence against its propriety.

What was done was done in strict pursuance of the terms of the mortgage (Record, p. 1791); and it is not alleged in the bill of complaint that the transaction was unfair to the company or to any body. It took place in 1910, and has never been attacked by any one interested on the ground of its unfairness.

The American Trust Company had before it a report showing that these freight boats caused a loss from operation of $149,902.68 in 1907, of $76,886.82 in 1908 and $87,184 in 1909 (Record, pp. 2101, 2102).

The total result to the company and its bondholders from the sale of the freight boats and of Union Wharf

(which was used by the company only for these boats) naturally presented itself to the trustee of the mortgage, as it did to the company's directors, as securing an annual saving of $50,000 (this being the interest on one million dollars of bonds retired), through the conveyance of property which not only earned the company nothing net, but, instead, annually caused it a loss averaging for the preceding three years $104,657.83.

Add to this that these boats were built for a special use between New York and Boston, and were not paying for the purpose for which they were built, that they were old boats, and that as the Trust Company was informed, they were worth only $521,500 and could then be replaced new for $800,000 (Record, p. 1821).

This being the whole state of the case, it is submitted that the court erred in basing its action in this suit upon a finding that Mr. Robbins violated some trust toward other bondholders by purchasing the freight boats and Union Wharf for one million dollars of the company's own first mortgage bonds.

VII.

Corrections of Some Errors in Figures Adopted by the Court.

1. The court states that on November 15th, 1909, securities were issued by the Metropolitan Steamship Company of which there came into the possession of the Assets Realization Company along with other securities " $375,923.14 demand notes " (Record, p. 2143). This is an error of fact which led the court into errors of reasoning. In reality these demand notes were all issued later (Record, p. 680). The balance sheet of Nov. 15, 1909 (Record, p. 2095), shows that the company was launched into business with a cash capital of $1,000 and no other quick assets of any nature. No business can be carried on without some working capital. Moreover the company was necessarily going behind financially

during the winter period between November 15, 1909, and March 5, 1910, when the Yale and Harvard were tied to the dock and were a mere source of expense, and when the freight boats were losing money. The money necessary to keep the company going and to acquire the so-called liquid assets of the Receivers (Record, p. 717), was temporarily advanced by the Assets Realization Company (Record, p. 724), which took demand notes for the sums so advanced, until on March 5th, 1910, these demand notes amounted to $375,923.14.

2. The Vice-Chancellor says (Record, p. 2147) that the freight boats and Union Wharf were transferred to the Metropolitan Steamship Company of Maine for a consideration of $1,500,000. This is an error. The amount paid was $3,000,000 (Record, p. 231). In itself this is of no importance. The total result of the organization of this Maine corporation was to give it the freight boats as an asset and an outstanding capital stock fully paid of $3,000,000.

2. The court says (Record, p. 2156) : " That there has been a decrease in the debt of the company there has been no doubt. The bonds have been reduced from $3,000,000 to $1,578,000 ; demand notes of $500,000 have been paid ; the ten-year notes have been reduced from $1,500,000 to $1,425,-291.78. Upon paper the liabilities have decreased from $7,000,000, as of November 15, 1909, to $5,695,532.49 as of December 31, 1916."

Turning to the Financial Statement on page 2094 of the Record, it will be seen that the Total Liabilities on December 31, 1916, were $4,981,796.48, instead of $5,,659,532.49, as stated by the Vice-Chancellor. He included among the liabilities a bookkeeping surplus of $677,736.01. The decrease of actual liabilities about which the court is speaking, was therefore over two million dollars.

The reference to the notes for $500,000 as demand notes is also in error. These were the notes bearing interest at six-per cent. and due in two years from their date (Record, p. 2095). This confusion between these two-year notes and the demand notes issued later, has importance, at least as showing that the Vice-Chancellor had not the financial history of the company clearly in mind.

In the statement above quoted, the Vice-Chancellor also

overlooks the fact that when the Chase management took hold, the financial condition of the company was considerably worse, because of its going financially behind between November 15, 1909, and March 5, 1910.

The Vice-Chancellor also overlooks the fact that in order to judge the effect on the company's finances of the contract with the Pacific Navigation Company, which is the only substantial ground of complaint in the pleadings, the comparison must be between October 10th, 1910, and December 31, 1916; and the financial condition of the company was much worse on October 10, 1910, because during the season of 1910, the Yale and Harvard failed to earn net the fixed charges of the year.

An accurate statement of the improvement of the company's financial position between October 10, 1910, and December 31, 1916, is to be found in the expert testimony of Mr. Goodloe on pages 376-378 of the Record. During that period the Company paid liabilities of $1,418,506.19 and added to its current assets $115,054.56.

4. The Vice-Chancellor says (Record, p. 2151): "There came into the treasury of the Metropolitan Steamship Company of New Jersey approximately three hundred thousand dollars on March 5, 1910. The books do not show how this sum was disbursed. I find that in some way it was used to finance Canfield in his purchase from the Hudson Navigation Company of the three hundred and forty-seven bonds, which were used as a part of the purchase price by the Maine No. 2 and Canfield of the freight steamers and wharf."

It is true that the Vice-Chancellor does not find that the money in the treasury of the defendant company was *improperly* used. His language is literally consistent with the fact that this money was properly used to pay demand notes of the company held by Mr. Canfield. But the employment of this finding in the legal reasoning of the Court indicates that the Vice-Chancellor here also erroneously misapprehended the figures and their bearing.

The statement that "the books do not show how this sum was disbursed" is at least partially erroneous. Mr. Goodloe, the expert accountant, pointed out (Record, p. 385) that a journal entry of March 5, 1910, shows the payment on that day of demand notes amounting to $121,666.95. As explained (Record, pp. 347, 348) the books of the New York Agency

which were kept in the company's offices at its pier on the North River were burned in a fire which consumed that pier, and the information contained in those books was not available to the expert, or to any one at the time of the trial. But the books did show that of the $375,923.14 of demand notes purchased of the Assets Realization Company on March 5, 1910, all were paid with the interest on them before October 10, 1910, except one note for $95,506.19 (Record, p. 2095); and Mr. Nicholson testified that he did not pay them during his treasurership which lasted from the late afternoon of March 5, 1910, until after October 10, 1910 (Record, pp. 465, 524, 525).

It also appears that the defendant company was put in funds to extinguish these liabilities, before the new management went in, through the action of the new Maine Company, which took off its hands, before the new management went in, certain old traffic balances, and accounts and other property producing no income in its hands. It further appears that the price paid yielded a profit to the defendant company of about $30,000 (Record, pp. 480-482, 465, 2067).

Moreover, Mr. Chase testified (Record, p. 257), that "whatever funds the company had were used in meeting obligations of the company," a large quantity of "outstanding bills and all claims and all demand notes."

If the management of the Metropolitan Steamship Company, whether the old management or the new management, were able at any date to pay off legitimate outstanding demand notes of the company and thus stop the running of interest upon them, that action was not wrongful according to any known rule of law.

Mr. Canfield was by all rules of law entitled to receive payment of any lawfully outstanding demand notes of the Metropolitan Steamship Company which he had purchased from their lawful holder.

If A pays to B money which he owes B, he has no right to concern himself with what B does with the money so paid. It is submitted that it is simply a legal absurdity to contend that A has any interest as *cestui que trust*, or any interest of any other nature in property bought by B with money thus paid.

So whatever sum was received by Mr. Canfield on March 5, 1910, in payment of any of the demand notes of the Metropol-

itan Steamship Company which he had purchased, was just as much his money (as representing his principal, Mr. Robbins), as was the money borrowed by him from other sources. What he did with his money was no concern of the Metropolitan Steamship Company, its stockholders or its creditors. If he used it in whole or part toward buying any of the securities which he bought on that day, these securities were none the less his securities, unaffected by any trust for his debtor under any known principle of law or equity.

It is respectfully submitted that the court below erred in its apprehension of this transaction and its legal effect.

5. The Vice-Chancellor says (Record, p. 2156) : " He " (Robbins) " has succeeded in taking out in preference to every other bondholder and every other creditor the money that it was said was used to finance the purchase from the Assets Company."

The Vice-Chancellor here again errs in his figures. The amount paid the Assets Realization Company was $1,400,000 (Record, p. 1750). From the earnings of the company there have been paid through the sinking fund provisions of the first mortgage $422,000 of first mortgage bonds, in which Mr. Robbins had no interest (Record, p. 315). Next in pressing importance were the demand notes, and the Metropolitan Company has paid these to the amount of $375,923.14 (Record, p. 175). Next to fall due were the two year notes for $500,000. One for $25,000 was paid. The rest were exchanged for second mortgage bonds. Of the bonds issued for the two year notes and for cash $464,000, were paid to the Pacific Company (Record, p. 271). The money so obtained was used by the Pacific Company to retire its preferred stock issued for $250,000 in cash for which part of the second mortgage bonds were issued (Record, p. 270). This leaves $214,000 as the only possible payment on the indebtedness represented by the original $475,000 of two year notes. Nothing has ever been paid on any other indebtedness in which Mr. Robbins can have been interested. $25,000+ 375,923.14+214,000 is only $614,923.14. As the Pacific Navigation Company held a substantial amount of the common stock of the Pacific Company, only a part of the $214,000 can have gone to the benefit of Mr. Robbins (Record, pp. 247-253).

It is impossible, therefore, that Mr. Robbins can have "succeeded in taking out" anything like a half of the $1,400,000 paid to the Assets Company on March 5, 1910.

Yet as pointed out earlier in this brief, this evident misunderstanding is the Vice-Chancellor's controlling, though legally erroneous, reason for the judicial interference with the management of the defendant which has introduced the most threatening confusion into a previously profitable business.

VIII.

Preferences.

The reason given by the Vice-Chancellor for taking the management of the Metropolitan Steamship Company out of the hands of its lawful stockholders, directors and officers is that this management has given "preference" to certain creditors, and unless interfered with will give further "such preferences."

1.

Business Aspects.

The facts are not in dispute. The Chase management had no existence prior to March 5, 1910. At that date the only tangible property of the Company was the valuable passenger steamships Yale and Harvard. The Company still owns those steamships, and they are in as good condition as they were then and more valuable. They have a well established business of the character authorized by the Company's charter between ports on the Pacific Coast, from which they have derived since 1910, and are certain to derive at least till 1922, a handsome net income.

The Chase management found that to protect the Company from foreclosure of the first mortgage, they must provide money for a sinking fund, and have done this as required, so

that there have been retired $422,000 of first mortgage bonds. Is this criticised?

The first mortgage bonds are not due for many years. Is it suggested that their holders have any legal or equitable right to be paid earlier?

There were and are $1,427,291.78 of notes bearing no interest and not due until November 15, 1919. Is it suggested that the holders of these notes have any legal or equitable right to be paid before their notes are due? Their position is better than it was on March 5, 1910, because the property of the company is more valuable, its earning power is greater, and the indebtedness to be cared for is much diminished.

Moreover, when the $500,000 of two year notes were issued, there was no other indebtedness of the company but the first mortgage bonds. The ten year notes had no consideration except the surrender of an equal amount of capital stock. As against holders of the two year notes, this exchange of capital stock for notes was probably invalid. At any rate, it cannot be doubted that everybody concerned expected the notes due in two years to be paid, if possible, without reference to any claims of holders of the notes bearing no interest, whose payment was postponed for ten years.

If any persons loaned money to the company to prevent the collapse of its business and bankruptcy, thereby benefiting all its unsecured creditors, such lenders naturally expected to be repaid as soon as possible. Any holder of unsecured indebtedness who objects to the prior payment of such loans is ungrateful and unreasonable.

But aside from the sinking fund first mortgage bonds, no evidences of indebtedness have been paid except those issued for money advanced to prevent bankruptcy, and a part of the $500,000 of two-year notes.

No evidences of indebtedness have been left unpaid except first mortgage bonds and ten-year notes, or notes exchanged for ten-year notes. It is submitted that any corporate management which had used current earnings unnecessarily to pay evidences of indebtedness bearing no interest and not due for years to come, in preference to demand notes and second mortgage bonds either of short maturity or overdue, all bearing interest, would be adjudged guilty of business incapacity, if not of a positive violation of legal duty.

It is no wonder that the complaining stockholders did not raise any such issue by their bill of complaint. If the Chase management had favored any holders of ten-year notes by paying them before they were due, and had left the company exposed to the attack of creditors whose evidences of indebtedness *were* due, the stockholders might with much force have claimed that their interests were imperiled. But it was plainly a measure of protection to the defendant company and, therefore, to its stockholders, to extinguish as rapidly as possibly all claims against the company on which payment was overdue.

2.

LEGAL ASPECTS.

Apart from statutes, preferences between creditors are not unlawful.

Bissell vs. Berson, 47 N. J. Eq., 580.

The Metropolitan Steamship Company is distinctly not found to be insolvent (Record, p. 2182).

The Vice-Chancellor says that *if* all the property of the company should be immediately destroyed, and its earning power, therefore, be immediately ended, the company could not pay the ten-year notes in full.

But a similar statement could probably have been many times made with regard to many prosperous concerns, which in fact did, nevertheless, pay all their debts in full.

At the time when the Court took away from its legally appointed and competent directors and officers the management of defendant company's business, no creditors were pressing the company for immediate payment (Record, p. 514).

It is submitted that no concern of which this can be said is, under the laws of this state, to be interfered with because of insolvency.

The defendant company has never been threatened with bankruptcy except during the late summer of 1910. Until that situation was cleared up the Chase management paid none of the company's evidences of indebtedness.

In *Trust Co. vs. Trustees of Wm. F. Fisher & Co.*, N. J.

Eq., 602, the Court of Errors and Appeals had under consideration the effect of Section 64 of the New Jersey Corporation Act rendering null and void as against creditors transfers made by corporations which have become insolvent or have suspended their ordinary business for the want of funds to carry on the same. At page 604 the court said:

> "In enforcing this statute we are not controlled by the definition of insolvency contained in the Bankrupt act, but must accord to that term the meaning ascribed to it in the courts of this state. Here it denotes a general inability to meet pecuniary liabilities as they mature, by means of either available assets or an honest use of credit" (Approved *Wright vs. American Finance & Securities Co.*, 85 N. J. Eq., 181, 183).

IX.

Alleged Suspension of Business.

The Vice-Chancellor says (Record, p. 2158): "It is the duty of this Court to seize the property of the corporation upon the ground that it has practically suspended the business for which it has been incorporated."

Here again there is no dispute about the facts. What the Vice-Chancellor terms a "suspension of business" is the execution of the contract (Record, p. 2103) with the Pacific Alaska Navigation Company."

1.

Business Aspects.

The only tangible property of the Company when the Chase management took hold of its affairs consisted of the passenger steamships, Yale and Harvard. They are being used for the business for which they are adapted and are yielding to the company from that business large net earnings.

The defendant Company has employed as its agent to

operate these boats in the business for which they are adapted a competent agent, a well organized and prosperous steamship company operating other boats in the same waters.

This business arrangement is admittedly advantageous.

(*a*) By utilizing the existing operating organization, wharves and offices of the Admiral Line, great savings especially of overhead expense, are absolutely secured.

(*b*) The defendant company is guaranteed against the risk of being unable to meet its fixed charges and expenses in possible bad years, and is assured a minimum return sufficient to amortize in time all of its indebtedness.

2.

LEGAL ASPECTS.

(*a*) It is submitted that there is no principle of law which makes it a breach of duty on the part of the management of a corporation to employ a proper agent in the conduct of its business, or even to lease its property on advantageous terms.

(*b*) In this case the contract entered into was without dissent authorized by the stockholders at a meeting duly called for the purpose, with individual notice to every stockholder.

(*c*) The charter of the company was framed by the reorganization managers so as to prevent technical objections to business arrangements advantageous to the company. It provides (Record, p. 25), " that all other powers, now or hereafter permitted or granted under the laws of the State of New Jersey or by the laws of any other State, Territory or Country into which the corporation may go or seek to do business which a corporation incorporated under the Acts under which this corporation is incorporated may now or hereafter have, are hereby expressly included as if such other or general powers were herein set forth at length."

(*d*) No stockholder or director in fact objects to the arrangement with the Pacific Alaska Navigation Company.

X.

Diversion of assets by a part of the stockholders.

The Vice-Chancellor in his Conclusions on the Law (Record, p. 2164) puts his decision on the ground "that a majority of the stockholders of a corporation, no matter how large, has no right to divert to themselves assets of the company to the detriment of its stockholders and creditors" or "to divide the assets more or less among themselves to the exclusion of the minority."

But it is an evident confusion of thought to object because of this rule to the collection by a creditor of the debt of a solvent corporation, because he also happens to be a stockholder, no matter how large.

XI.

The Vice-Chancellor lays great stress in his Conclusions of Law as a distinguishing element in this case on an assumed fact that everything that has happened was contemplated by the majority of the stock "prior to the incorporation of the company." This seems legally unimportant if true ; but the evidence introduced by the complainant and uncontradicted shows conclusively that it is not true. Mr. McKinnon's testimony (Record, pp. 687, 673, 680, 681) shows that prior to and at the incorporation of the company the controlling interest was held by the Assets Realization Company, and that the present management, whose "plans" are in question, had at that time no relation to the defendant company.

XII.

Bringing Suits.

One avowed purpose of the Vice-Chancellor is to have extensive litigation carried on at the expense of the defendant company. The varied litigation contemplated in foreign jurisdictions will cost an enormous, if unknown, amount. This expense will not be felt by the small minority stockholders, and it is submitted that it is unjust and legally unjustified to saddle it upon the majority against their judgment.

1. The undisputed evidence as herein above analyzed does not, as a matter of business judgment, sufficiently justify throwing this corporation into extensive litigation against the judgment of its legally constituted management.

Indeed, the notion that such rights of action may exist is hardly even fairly conjectural. It is, on the contrary, evidently based on misapprehension of facts and figures and on erroneous conceptions of law.

2. No such issues were before the court and all the facts are therefore not known to the court.

3. Minority stockholders, if they disagree with the judgment of the majority as to the expendency of this litigation, can fully protect their interests by stockholders' suits in equity.

XIII.

Appeal from order restraining payment of Second Mortgage Bonds.

It has been necessary in this case to make several distinct appeals. The first relates to the injunction restraining the defendant company from paying "any money to Edward D. Robbins, Warren D. Chase, The Pacific Company, a corporation, the holders of any second mortgage bonds of the said defendant company, or any officers or directors of said company for salaries or services."

It is submitted that this order was erroneously issued for the following reasons, whose foundation has been already discussed :

1. It was based entirely upon a determination by the Court below of issues which were not properly before the Court.

2. Upon the undisputed facts there is no rule of law or equity which justifies such an order.

(*a*) There was no evidence that Warren D. Chase, Edward D. Robbins, The Pacific Company, or any officers or directors of the company were urging any improper claims against the company.

The second mortgage bonds were due and payable. Their issue had been made in order to protect the company from threatened bankruptcy by funding its overdue liabilities, by extending the term of some that could not otherwise be met, and by securing funds to meet immediately necessary expenses.

Regina Music Box Co. v. Otto, 65 N. J., Eq., 582 ; affirmed in 68 N. J. Eq., 802.
Vail v. Jameson, 41 N. J. Eq , 648.

There was no question about the adequacy of the consideration. The bonds were all actually paid for in full, in cash. In substance the arrangement provided as a consideration for the bonds, whose face value was $750,000, cash to the amount of $250,000 and $500,000 of notes (including $475,000 of principal and the accrued interest on this sum). There was no question about the validity of these notes. They were issued when the company was organized. They had passed by legal transfer for value before maturity to the Pacific Company, which was supposed to still hold them.

Neither the Pacific Company nor Edward D. Robbins was connected with the defendant company, except as a creditor. Neither was a party to the suit, whose rights could be affected by any decision of the Vice-Chancellor.

The holders of the second mortgage bonds had not sought any advantage against the defendant company from the fact that these bonds fell due on October 10th, 1915. But it should have appeared to the Vice-Chancellor a consequence to be expected that, if the bondholders were caused to think that their debtor was to be made to refuse to pay their bonds, they would naturally seek to enforce what they believed to be their rights.

XIV.

Appeal from order admitting creditors as co-complainants.

The defendant also appeals from the order of the Court admitting Newbert and Noyes as co-complainants (Record, p. 2173). Newbert and Noyes hold a relatively small amount of the ten-year notes of the defendant company not due until November 15, 1919. They were admitted at the conclusion of the hearing as co-complainants against defendants' objection.

This action was brought as a stockholder's action for the benefit of all stockholders who might choose to join in it. The cause of action was a cause of action of the corporation itself against its directors.

But creditors have no right under any principle of law or equity to represent their debtor, and cannot possibly be proper parties to pursue an action of this nature.

1.

It is submitted that there is no rule of law or equity which creates any right of action in two noteholders, whose notes are not due, against the defendant directors for a breach of their duty as directors upon the facts pleaded or proved in this case.

2.

A creditor's action in equity can only be sustained by a judgment creditor.

United, &c., R. R. Co. vs. Hopcock, 28 N. J. Eq., 264.
High on Receivers, 4th Ed., Sec. 406.

3.

In equity a stockholders' suit and a creditors' suit (especially a suit which is not brought for creditors generally) are governed by very different principles. The legal elements of the cause of action of the stockholder are necessarily dif-

ferent from the legal elements of the cause of action of the creditor, even upon the same state of facts. Where the stockholders and the creditors are independent parties a suit which is both a stockholders' bill and a creditors' bill is fatally multifarious.

It is, we submit, erroneous to render a bill in equity multifarious by admitting new parties whose equitable cause of action is different from the equitable cause of action of the original parties.

Morrelis vs. Morris, etc., Canal Co., 1 N. J. Eq., 31.
Van Mater vs. Sickler, 9 N. J. Eq., 483.

XV.

Appeal from order restraining stockholders and directors and impounding records.

An appeal has been taken from the order of the court restraining the defendant company from holding any meetings of its stockholders or directors and impounding its books and papers (Record, p. 2174).

For the reasons elsewere fully discussed, it is submitted that upon the undisputed facts the Vice-Chancellor erred in thus taking away from the legal authorities of the defendant company possession of the books and papers, and especially in absolutely forbidding to them all right to act in any way in protection of the company's interests.

XVI.

Appeal from first order appointing a Receiver.

An appeal is taken from the Order of February 3, 1917, appointing a receiver (Record, p. 2176) under the general equity power of the Court.

It is submitted that this action was erroneous for the reasons given elsewhere in this brief and upon the following grounds :

1. Upon the undisputed evidence the issues actually raised by the pleadings could not be rightly decided against the appellant.

2. This order is only attempted to be legally justified by basing it upon a determination of issues which were not legally before the court, and upon which the appellant has never had its day in court.

3. Until the bill of complaint, 12 days later, was amended (Record, p. 64*b*) the Court below was confessedly without any statutory authority, and had no jurisdiction except by virtue of its ancient equity powers.

But apart from statutes, a court of equity has no power to dissolve a corporation or to appoint a receiver to wind up its affairs.

> " It is well settled that the shareholders in a corporation cannot extinguish its charter and dissolve it, and that a court of equity cannot do so at their instance."
>
> Benedict vs. Columbia Construction Co., 49 Eq., 23, 36.
> Einstein vs. Rosenfeld, 38 N. J. Eq., 310, 311.
> Laurel Springs Land Co. vs. Fougeray, 50 N. J. Eq., 756, 760.
> High on Receivers, 4th Ed., Sec. 406.

4. The general powers of a court of equity permit the appointment of a receiver *pendente lite*, or as ancillary to the administering of other relief. But this appointment was made upon the final hearing of the cause, and yet is not in any way ancillary to other substantial relief. It stands alone as the substantive relief granted.

It is submitted that, apart from statutes, a judgment upon final hearing which amounts to nothing except a final assumption by the court of the management through a receiver of the business of a corporation, is on its face unjustified by any principle or rule of equity jurisprudence.

5. No threatened fraud or breach of trust was shown to justify a drastic exercise of the equity powers of the Court.

In Kean and Colt, 5 N. J. Eq., 379, the Chancellor said : " To authorize an injunction and the appointment of a receiver, there must be a well grounded apprehension of injury about to be done. I see no sufficient cause of present alarm to demand the interposition of the Court. The misconduct alleged in the bill occurred, if at all, several years since ; too long since to be the ground of apprehension of impending mischief. No act is stated as now threatened, or misapplication of funds as about to be made."

The alleged probability that the management would use the current earnings of the business to pay overdue debts, rather than apply them in payment of debts not to be due for nearly three years, is not a threatened fraud under any known rule of equity jurisprudence.

6. Such probable action is not a threatened breach of trust on the part of directors and officers under any known rule of equity jurisprudence.

Nor is there any rule of equity which makes a stockholder, as such, a trustee for other stockholders or creditors.

Nor is there any rule of equity, which hampers a creditor in collecting evidences of indebtedness of a corporation not found to be insolvent, whether he is, or is not, a stockholder, or whether he is, or is not, a friend of the majority stockholder of the corporation.

7. There is no rule of equity which authorizes a chancellor as a measure of final substantive relief to appoint a receiver to bring, probably fruitless, and at least, doubtful suits at great cost at the expense of the majority stockholders and creditors for the possible benefit of a few small minority stockholders.

8. The considerations set forth earlier in this brief in relation to orders again incorporated in this order are again submitted as showing error on the part of the court below.

XVII.

Appeal from order appointing Statutory Receiver.

The order appealed from which appoints a statutory receiver (Record, p. 2182) was granted on February 15, 1917.

On the same day without notice to any defendant and without the knowledge of any defendant, the bill of complaint was amended (Record, p. 64, *b.*) by adding a new paragraph counting on the statute and an additional prayer for the appointment of a receiver under the statute.

This amendment being filed, the Vice-Chancellor immediately, and without notice to or hearing of any defendant, granted the order now appealed from.

It is submitted that this order was erroneous for the reasons discussed in other parts of this brief, and upon the following grounds :

1. Rendering a judgment against the appellant without giving it notice or an opportunity to be heard was not due process of law. The judgment so rendered is void under the constitution of New Jersey and under the 14th Amendment to the Constitution of the United States.

Shaw vs. Standard Piano Co., 100 Atl., 167.

2. An amendment to a bill in equity, stating an entirely new cause of action on a statute, and raising substantially different issues, added without notice to defendants after the final hearing in the cause, does not give a court of equity jurisdiction (without opening the whole cause) to make a finding upon the new issue or to sustain the new cause of action or to render any judgment thereon.

3. The statutory remedy requires an independent proceeding *in rem*, and cannot properly be given through an amendment to a bill framed as a stockholders' suit representing the corporation against its directors.

Pierce vs. Old Dominion &c. Co., 67 N. J. Eq., 399.

4. Under the rules of equity, it is not enough merely to allege fraud, insolvency, etc., in general terms. Specific facts

must be set up from which it can be seen that the fraud or insolvency follows. The statute relied on did not relieve from this duty, but expressly required that the bill or petition must set forth the facts and circumstances of the case.

5. This order is *in rem* against the corporation, divesting it of its franchises and of the title to its property. No more drastic action is conceivable. It is the death penalty. To justify it, the fact upon which the jurisdiction of the court rests should be clearly established. In other words it must be definitely and convincingly proved "that the business of the Metropolitan Steamship Company has been and is conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders." Nothing else will do. Fraud or breach of trust heretofore committed or threatened in the future are not enough, unless they are actually and unmistakably producing the result that the business of the corporation both (1) has been and (2) is being conducted at a loss and (3) greatly prejudicial to the interest of its creditors or stockholders.

It is earnestly submitted that not only is such a state of things *not clearly and convincingly proved*, but that, on the contrary, a directly opposite state of facts is conclusively shown to exist. If a company whose financial condition has confessedly been improving ever since December, 1910, and is sure, if left undisturbed by the court, to improve steadily for at least five years to come, can be annihilated under the statute relied on for this order, there is no safety for any business under the laws of this state.

The report of the receiver (Record, p. 2131) contains no new facts except that the action of the court in enjoining the defendant company from paying anything to the Pacific Company and Edward D. Robbins, who are not parties to this suit, had caused them to bring suit in the courts of their domicil to enforce collection of claims against the company for unpaid and overdue second mortgage bonds and for legal services.

The defendant company, its directors and officers have no control over the adverse action of the company's creditors. They have no means of turning over to the Receiver any property of the company. An objection to the conduct of the treasurer, Mr. Chase, because he was absent when the Receiver visited Hartford, is unreasonable, for it is apparent since he had

been away since Sunday, that he did not receive the telegram of Mr. English announcing the coming of the Receiver.

There is nothing in all this to change the fundamental fact that the business of the company conducted through the agency of the Pacific Alaska Navigation Company under the reasonable and necessary supervision of the officers of the company was producing and was certain to produce for at least five years net returns sufficient to pay all claims now sued on and all debts now due or to fall due within two years, and to pay sufficient interest on a refunding of the ten year notes, and gradually to amortize the refunded debt.

XVIII.

Appeal from Order confirming Statutory Receiver.

1. All the objections to the validity of the order appointing the statutory receiver apply to this order, except that the defendant had notice of a hearing on this order and appeared and objected to it. It may be contended by the respondents that this cures the defect of lack of original notice. But it is submitted that such a contention is merely specious. An order absolutely unconstitutional and void cannot be made valid merely by issuing another order confirming it. The hearing on March 6 cannot be treated as resulting in an original order, because no fresh appointment of a receiver is made dating from that day. The order purports to confirm the previous appointment and carries with it a confirmation of all that may have been done under it in the meantime.

Moreover, there was no presentation at this time of facts or grounds for the appointment of a receiver and no finding at this time of any facts giving the court jurisdiction to appoint a receiver under the statute. As an original appointment this order would be fatally defective.

XIX.

It is respectfully submitted that the several petitions of appeal of the defendant-appellant should be sustained by this court.

In passing upon these appeals it is respectfully asked that this court shall consider what a departure from old standards of law will practically accomplish in this case.

Unless the complainants have some ulterior plan for securing as a result of these proceedings some special benefit which will not be shared by the majority stockholders or by the majority of the creditors of the defendant company, how will they benefit from the action of the court below? Their interests are relatively so small that they may not care to what risks this action exposes the defendant company's affairs, but *how will these complainants benefit?*

Is the chancery court to take possession of the Yale and Harvard and operate them through a Receiver on the other side of the continent?

Or is the court through its receiver merely to conduct extensive litigation in other jurisdictions which will probably be fruitless and will be certainly very expensive?

Is the chancery court to continue the contract which it finds to be a practical discontinuance of the company's business and use the resulting funds? If so, how shall it use them?

How long are the franchises of the defendant corporation, annihilated by the court, to be exercised by the court itself? For the five years or possible ten years of the existing operating agreement? If so, what is to happen at the end of that time?

Or are all the rights and assets of the defendant company to be sold in New Jersey at a receiver's sale?

Will such a sale benefit the minority stockholders? Will it benefit the company's creditors?

Under war-conditions a large amount of money for such a purchase will not be readily forthcoming. Moreover, a purchaser putting up actual money will properly dread all uncertainties. Any purchaser must face the fact that the action

of the courts of this state has rendered the Yale and Harvard subject to a foreclosure of both the second mortgage and the first mortgage. He must also face the fact that submarine dangers, even though imaginary, are lessening passenger travel by water, and that the Pacific Alaska Navigation Company may desire to get rid of its contract. If so, in the midst of the litigation caused by the decrees of New Jersey Courts, it may obtain a legal pretext for avoiding further obligations under this contract.

It is respectfully submitted that in its business aspects the sustaining of the orders of the Court below will seem a result of unreasonable technicalities. In its legal aspects the sustaining of these orders will involve a new departure in equity jurisprudence, and not an application of hitherto well understood rules and principles of law.

FREDERIC J. FAULKS,
Of Counsel with Appellant.

New Jersey Court of Errors and Appeals

Between

JENNIE R. MORSE, *et al.*,
Complainants-Respondents,

and

METROPOLITAN STEAMSHIP COMPANY,
Defendant-Appellant.

On Bill, etc.

On Appeals from Chancery.

Brief for Complainants-Respondents.

The gist of this case is fraud.

We have not attempted in this brief to answer *seriatim* the defendant's brief for the reason that it utterly ignores the facts in the case and is misleading. A complete resume of the facts will be found in the conclusions of the Vice-Chancellor printed at p. 2137, &c. It is utterly impossible to obtain a fair idea of the effect of the testimony by considering excerpts taken from it here and there. The case is one of fraud, and in order to obtain a complete understanding, the entire testimony must be read. We have endeavored, however, so far as it is possible, to set forth in this brief what we consider to be the salient portions of the testimony.

The bill was filed to secure the removal of the directors and appoint a receiver in their place to manage the affairs of the company, on the ground that the conduct of the directors, who are defendants, has been such as to constitute a gross abuse of their trust, and in fraud of the rights of the stockholders.

The prayer of the bill is founded on that contained in the bill in the case of *Edison* v. *Edison United Phonograph Co.*, 7 Dick. 620, page 621. (Record, p. 18, l. 30 to p. 19, l. 20.)

The power of the Court to appoint a receiver where the actions of the directors have been unlawful, or against good morals, or not in good faith, or fraudulent, is abundantly settled by the adjudications of our courts.

See

Edison v. *Edison United Phonograph Co.*, *supra*, pp. 626-627.

Siegman v. *Electric Vehicle Co.*, 2 Buch. 403, p. 410.

Park v. *Grant Locomotive Works*, 13 Stew. 114, *affirmed* 18 Stew. 244.

Ellerman v. *Chicago Junction Ry. Co.*, 4 Dick. 217, page 232.

Allegations of the Bill.

The bill shows that originally there had been a steamship company organized under the laws of Maine, called Metropolitan Steamship Company, and referred to as Maine Company No. 1, which had operated the Harvard and Yale between Boston and New York, and had also operated a line of freight steamers (sections 4, 5 and 6, p. 2, l. 34 to p. 4, l. 28); that thereafter this company went into the hands of a receiver and its property bought in at the sale by one McKinnon (section 8, p. 5, l. 6), the receivers having meanwhile continued the operation of the company's steamship lines (section 9, p. 5, l. 15).

The object of the defendant Metropolitan Steamship Company was (section 9), "for the purpose of taking over the assets of the said

Maine Company No. 1, and operating said steamships and boats for the carriage of both passengers and freight, and for continuing the business which had theretofore been carried on by the said Maine Company No. 1'' (p. 5, l. 31).

The very object of the incorporation of the defendant Metropolitan Steamship Company, therefore, was to continue the business of the old company and secure the advantage of the valuable good will which had grown up in the operation of the steamers Harvard and Yale.

The bill then shows that the New Haven Railroad, which owned all the transportation lines, both rail and water, between New York and Boston, except that operated by the defendant company, sought to gain control of the defendant company for the purpose of eliminating the competition which existed between its service and that furnished by the Harvard and Yale and the freight steamers; that through negotiations with the said McKinnon the Railroad Company secured control of the stock of the defendant company; that it put in office a board of dummy directors, who are the individual defendants in the bill; that they have and do now act as tools of the Railroad Company, and that at the Railroad Company's behest and in fraud of the rights of the complainant and the minority stockholders they caused to be incorporated under the laws of Maine a second Metropolitan Steamship Company, to which they transferred the freight boats and docks of the defendant Metropolitan Steamship Company, and also caused to be incorporated the defendant Pacific Navigation Company, to which they transferred, through the medium of a lease, the steamships Harvard and Yale, and banished them to the Pacific Coast (sections 13 to 21, pp. 8-15).

The result is (section 22) that the defendant company has been denuded of all its property except its franchise to be a corporation (p. 15, l. 26).

General Statement of the Record.

It is safe to say that this record shows one of the most daring and ingenious assaults upon the rights of creditors and stockholders of a great corporation, owning millions of dollars of property in a successful effort to crush the competition of that company, which has ever come before a court.

The New Haven R. R. coveted for itself a monopoly of transportation in New England. The President, Mr. Mellen, frankly so admitted.

It had a complete monopoly of the transportation by both rail and water between New York and Boston, except for the line of freight and passenger ships operated by the defendant company. The passenger ships of this company were the Harvard and Yale, exceptionally fast, well equipped and attractive steamers which had been built at a cost of $1,125,000 each. The defendant company owned the equity in the valuable Union Wharf at Boston, it also had a lease on the India Wharf at Boston, and had dock and terminal facilities at New York, so that it was in a position to be, and was, a substantial competitor of the New Haven Railroad.

The existence of the Sherman Anti-Trust Law, and the pains and penalties which it imposes upon persons or corporations seeking to suppress competition, furnishes an adequate reason for the secrecy and elaborate efforts which were made to conceal the real transaction.

From the very day when it was proposed to lay down the keels of the Harvard and Yale in 1906, until the 5th day of March, 1910, when the ownership of those boats passed through stock control to the interests of the New Haven Railroad, the Railroad ceaselessly and guardedly schemed and worked to eliminate them as competitors.

In the final accomplishment of their purpose they made use, as their chief lieutenant, of Edward D. Robbins, the Railroad Company's General Counsel, and a former Director. He in turn employed as sub-lieutenants, Messrs. Chase & Canfield, lawyers of Hartford, Conn., and Mr. Nicholson, a lawyer of New York. To accomplish their purpose they brought into existence three separate corporations, namely, the New England Securities Company, the Chilmark Company and the Eastern Securities Company, through the use of dummy incorporators, and they retained other lawyers to act for them in various capacities.

The Railroad paid out for the direct purchase of the control of the defendant company $1,500,000 and in order to conceal the source of the payment, borrowed it in the name of its subsidiary, the Billard Company, backed by collateral deposited by another of its subsidiaries, the New England Navigation Company; and on Saturday morning, March 5th, 1910, when the actual transfer was made, caused the money to be deposited and re-deposited in various banks so that the final payment by cashier's checks of the Chase National Bank of New York represented the fifteenth time the money had either been deposited, checked out or re-deposited during that short business day.

The amended bill was filed March 29th, 1913, the original bill having been filed the December previous. The case was not brought to hearing until January 2, 1917. All of the facts relating to the transactions were in the knowledge of the defendants and had to be obtained by the complainant from the lips of witnesses in most cases hostile, and in every case dragged before a Master in Chancery by process of subpoena from courts of the state in which they resided, practically none of them having resided in New Jersey. Over 1,300 pages of testimony were taken out of court (p. 2137, l. 34).

The effort to unravel the involved financial transaction by which the money which secured the New Haven control of the defendant was paid over was long and tedious, involving several years and requiring the calling of no less than 22 witnesses who were officers or clerks of various New York banks through which the moneys had passed. Effort to secure documentary evidence of the New Haven Railroad in Connecticut was blocked by injunctive process issued by the Connecticut courts and every legal obstacle conceivable was thrown in the way of complainants who were stockholders and creditors and who were entitled to the information which they sought from the defendant (p. 2168, l. 15).

Although the company was incorporated under the laws of New Jersey, its only representative was Mr. Engelke, a lawyer of New Jersey, who, as a holder of a nominal share of stock which he had not paid for, acted as a dummy director.

Following the filing of the bill, the Robbins' interests, through their control of the stock, caused the retirement of Mr. Engelke, and taking advantage of the existing Corporation Law,

put in as directors Mr. Chase and two other employees of his, all residents of Hartford, Connecticut, so that when the case came on for hearing before the Vice-Chancellor, and various preliminary orders and injunctions were made, there was no person in this state against whom the orders could operate, and the Court was powerless to enforce its decrees. (See supplemental answer, p. 84, l. 21 to p. 85, l. 28 and report of Receiver, p. 2132, l. 27, to p. 2133, l. 17).

The report of the receiver (pp. 2131-2135) shows the disrespect which Robbins and his crowd had for the decrees of the court. When the receiver, following his appointment under the equity power of the court, went to Hartford for the purpose of receiving the cash and other assets of the defendant company, he found that Mr. Chase, the treasurer, although he knew he was coming, had run away, having left the Sunday previous, and no one either at his home or office knowing where he was or when he would return (p. 2132, l. 2 to p. 2133, l. 17).

The receiver further found a large sum of money belonging to the defendant which had been deposited in Hartford banks, had been attached by two separate suits, one brought by Edward D. Robbins as plaintiff, and the other by the Pacific Company, which Robbins owns. The basis of the suit brought by Robbins was an alleged claim for legal fees, and the basis of the suits brought by the Pacific Company was certain overdue and fraudulently issued second mortgage bonds (p. 2134, ll. 30-40).

The result of these attachments which were brought by Robbins, was to thwart the effort of the receiver to get possession of the property

in accordance with the decree of the court (p. 2135, l. 35), and he has since been compelled to go to the expense of taking out an ancillary receivership and fighting the attachment suits in Connecticut, as the Court knows from the preliminary application which was made for permission for him to continue that effort, pending the appeal. The Court will also remember from that application that Robbins has caused a foreclosure suit of the second mortgage, which secures these bonds, to be brought in California, and a receiver appointed there, to which suit the receiver here is a party, which suit is another effort of Robbins and his interests to thwart the receiver in his effort to secure the income from the Harvard and Yale, which they are now earning under the operating agreement with the Pacific Alaska Navigation Company, by which they are now leased.

In that respect this case is very much like that of *Bull* v. *International Power Co.*, 85 N. J. Eq. 5, and p. 204.

At the final hearing the defendant put in a technical, rather than a meritorious defense. Mr. Robbins, the one person who could have explained everything, was evidently afraid to take the stand. At least he was not called, although in court at the opening of the case, and although it had been previously announced that he would testify at the trial.

Mr. Chase, the person next to Robbins who knew most about the transactions, was called by the complainants. Messrs. Goodall and Stone, who were called by the defendant, materially helped the complainants' case, as a reading of their cross examinations will show. Mr. Goodloe, the accountant, knew nothing except what was stated in the books, and the books were con-

cededly inaccurate. The rest of the defendants' witnesses were mere dummies, who knew nothing, or messengers who had served papers.

The Vice-Chancellor gave the case the most careful consideration, and wrote two opinions, one on the facts, and one on the law. His conclusions of fact are remarkable in their grasp and appreciation of the salient points of the case. Moreover he had the benefit of counsels' corrections after the opinion was prepared (p. 2158, l. 22).

At the conclusion of his findings of fact, the Vice-Chancellor said (p. 2158, l. 25):

> "If there is any apparent error, I wish counsel would draw my attention to it."

In response to this invitation, counsel met with the Vice-Chancellor and did give him the benefit of their corrections. His findings of fact are printed in Volume 4 of the record, pp. 2137 to 2158 inclusive.

His conclusions of fact are founded absolutely in the testimony, as a review of the facts in the case will demonstrate.

EARLY HISTORY OF THE METROPOLITAN STEAMSHIP COMPANY.

The original Metropolitan Steamship Company, or Metropolitan Line, had been controlled by a Mr. Whitney, and had operated successfully as a freight line for some twenty-five years before the line was acquired by C. W. Morse. During those years there had evidently been a live and let live agreement as between the steamship line and the New Haven Railroad. At any rate, the steamship line operated successfully (p. 757, ll. 10-22).

In 1905 Mr. Morse bought the line and continued to operate it as a freight line successfully (p. 159, l. 10), and this live and let live arrangement continued for about a year under his operation.

ORIGIN OF THE HARVARD AND YALE.

In the fall of 1906 Mr. Morse conceived the idea of building the Harvard and Yale, in order to carry on a passenger as well as a freight business. The proposed building of the Harvard and Yale was a matter of more or less notoriety (p. 159, ll. 20-30), and immediately Mr. Mellen, president of the New Haven Railroad, sent for Mr. Morse, and had lunch with him at the Union League Club (p. 160, ll. 10-30), and at that luncheon the matter of the building of the Harvard and Yale and their effect on the traffic between New York and Boston, was discussed (p. 160, l. 34).

Morse testified (p. 160, l. 39): "Mr. Mellen said that he desired to obtain a monopoly of the passenger business between New York and Boston, or in fact to cover New England, and wanted to buy the Harvard and Yale." This conversation took place in 1906 or 1907 (p. 160, l. 26). Mellen admitted that it was the policy of the New Haven to monopolize New England transportation by both rail and water routes (Mellen, p. 1606, ll. 12-35).

The negotiations between Morse and Mellen amounted to nothing and the Harvard and Yale were completed. About the same time the New Haven Railroad built three fast freight boats (pp. 165-166). These freight boats were built at a cost of $900,000 apiece, Mr. Mellen said (p. 1641, l. 1), but they were built in such a way that they could be converted into passenger

steamers, either to compete with the Yale and Harvard, or to take their place when they should be eliminated. Mr. Mellen said on cross examination (p. 1642, l. 10, etc.):

> They were built first as freight boats with a view to their cheap conversion into passenger boats to compete with the Metropolitan freight boats between New York and Boston, but always, as I may express it, in the back of our heads we had the thought that we should use them to compete with the Yale and Harvard; therefore they were built with a view to a quick and ultimate conversion into passenger boats.
>
> Q In other words, if the Yale and Harvard were still running between Boston and New York you could convert them into passenger boats and compete with them? A I think that is what I had in mind.
>
> Q But as they went around to the Pacific coast— A They were still converted just the same.
>
> Q They were converted then to take the place of the Yale and Harvard? A To fill that line.

Prior to their conversion into passenger steamers they competed with the freight business of the Metropolitan Company and affected it very materially (Morse, p. 166, l. 24).

McKinnon says that during the entire period of the receivership there was a strong competition by competing lines from New York to Boston (p. 754, ll. 30-35). The only source of competition was the New Haven Railroad.

These freight boats were built and operated by the New Haven Railroad at a loss. Morse says that Mellen so admitted to him. His testimony was (p. 169, l. 10):

> Q What did he say about it? A He said they lost money.
>
> Q Did he say how much? A He said he expected to lose money.

And further he testified (p. 170, l. 2, &c.):

Q You are speaking of a time after the receivership? A Yes.

Q And about towards the close of the receivership? A Yes.

Q When there was some discussion on about the disposition of the Harvard and Yale? A Yes.

Q Was it as a part of that conversation that he discussed with you the amount of his losses in connection with the operation of the three fast freight boats? A He wanted to make up his losses on the combined freight, that they had a lot of money invested in running those boats.

Q Did he tell you at that time how much he had lost in the operation of those three boats? A I do not recollect of his mentioning an amount.

Q Did he say it was large or little? A He said they lost a large sum of money running those boats.

Q Did he say at that time why he had run those boats? A He said those boats had been run to destroy the Metropolitan line.

The Court. Did he put it as badly as that? What did he say? You do not mean to say Mr. Mellen said those boats had been run to destroy the Metropolitan line, do you?

A Mr. Mellen said that the New Haven road would lose a thousand dollars a day as long as it was in existence, before they would let the Harvard and Yale run against them.

Mellen testified on cross examination that these freight boats lost money. They had been operated by the New Haven Road under the name of the Merchants Line. Mellen's testimony was (p. 1644, ll. 1, &c.):

Q And using them as freight boats were they found to be economical? A They were not profitable; they lost for us a good deal of money.

Q As freight boats can give you a reasonable estimate of what they lost? A No.

Q I mean per day, per month, per year? A No, I would not be able to tell you that, I could not, but I know they lost considerable money; they were a losing venture, the line, the Boston Merchants Line was.

Q Losing venture from beginning to end. Were they the dominant feature of it? A I think they carried full as much or more than the Metropolitan Line in business.

Q Well, you could not have continued the use of these boats as freight boats without a certain prospect of loss? A I think it was a case of endurance, survival of the fittest, if the boats had continued running whether or no the New Haven Railroad could stand the loss; unless the Metropolitan could, one line or the other was bound to be withdrawn.

The Harvard and Yale were built and put into operation in the fall of 1907, and operated but a few months when the company went into the hands of receivers, owing to the panic of 1907 (p. 171, ll 30), and the fact that Mr. Morse, who was *persona non grata to* J. P. Morgan, could secure no funds with which to continue his financing (p. 172, ll. 1-18). (And see Austin, p. 1,000, ll. 24-36.) The receivers operated the ships for about a year, and on October 8, 1909, the property of the original Metropolitan Steamship Company was sold at receivers' sale, and purchased by a syndicate headed by John W. McKinnon, who was president of the Assets Realization Company.

Notwithstanding the competition of the New Haven and the fact that the company was in the hands of receivers, it operated successfully and made money. Mr. Apsey, the comptroller under

the receivers, stated as appears from Exhibit C. 198 (p. 1971, l. 30):

> Sheet 2 is a statement of Receivership operating showing a net profit of $252,781.71, exclusive of bond interest, also statement of receipts and expenses of Harvard and Yale showing net profit of $311,333.93. Under proper conditions in *freight* traffic, the net earnings of the company for these seven months should have been $75,000.00 additional.

EARLY NEGOTIATIONS.

The record shows that Henry W. Goodall, a sea captain and steamship man, located on the Pacific Coast, conceived the idea that the Harvard and Yale would be valuable acquisitions to his steamship business on the Pacific Coast. Accordingly in 1907 he came East in an effort, among other things, to see if he could secure the Harvard and Yale, but accomplished nothing (p. 582, l. 25). At that time the boats were being operated by the receivers, of whom Mr. Austin was the operating man (p. 582, l. 33).

It is quite significant that he went almost directly to see Mr. Mellen, of the New Haven Railroad. He said on direct examination (p. 583, ll. 1-21):

> Q Did you see anybody else? A Yes, I went and had a talk with Mr. Mellen of the New Haven Railroad.
>
> Q Had you known Mr. Mellen prior thereto? A No, I didn't know Mr. Mellen.
>
> Q Why did you go to Mr. Mellen? A Well, I was imbued with the fact, as a good many others have been before and since, that an arrangement might be made to get the assistance of the New Haven Railroad Company to send those ships away from the Atlantic coast.

Q Get what ships sent from the New Haven Railroad? A The Yale and Harvard.

Q I don't think that is clear—oh, get the assistance of the New Haven—I misunderstood.

The Court. Get the assistance of the New Haven to get the Yale and Harvard to the Pacific coast.

And on cross examination he said (p. 597, ll. 32-38):

Q As early as 1907 you took this matter up with Mr. Mellen, did you not? A Yes.

Q What imbued you with the idea that Mr. Mellen, of the New Haven Railroad, would like to get rid of those ships? A Like everybody I thought they would like to get rid of competition.

He met Mr. Mellen through Mr. Campbell, the vice-president of the New Haven (p. 598, l. 20). He said (p. 599, ll. 18-34):

Q Well, you at least went to him later on, did you not? A Not about having anything to do with the Yale and Harvard; I made a proposition later on to sell him some other property.

Q But the elimination of the Yale and Harvard was involved in your proposition to sell him some other property? A It was not involved in the proposition in any respect, as far as he was concerned; of course, I presume as an intelligent man he would know how it would be, he was acquainted with the Pacific coast.

Q He knew if your proposition went through the net result would be to take off the competition of the Yale and Harvard? A Being a man of reasonable intelligence, I suppose he did.

Q And you judged him to be a man of reasonable intelligence? A Yes.

Captain Goodall accomplished nothing, however, but the record shows that meanwhile the New Haven was not idle.

It appears that in December of 1907 a committee of the Board of Directors of the New Haven Railroad was appointed to look into the matter of taking over the Metropolitan Steamship Line. The record as taken from the New Haven minute book was as follows (p. 1686, l. 7, &c.):

> "Voted that the directors, Morgan, Miller, Skinner, Bruger and Ledyard be a committee to consider a proposition submitted by the president in regard to the Metropolitan Steamship Line, and report to the board."

The report of this committee was made on October 10, 1908, and was as follows (p. 1686, l. 35):

> A "The following report was submitted. The special committee appointed to consider the proposition concerning the Metropolitan Steamship Line has held two meetings, on September 19th and October 10, 1908, at which all the members of the committee were present, with the result that the committee respectfully reports to the board that it does not deem it advisable to consider the proposition *at present*. Adjourned. (Signed) J. G. Parker, secretary. Whereupon it was voted that the foregoing report be accepted and approved and the committee discharged."

Note the significance of the language, that the committee does not "deem it advisable to consider the proposition *at present.*"

Perhaps a reason for this is found in the fact that in October, 1908, Mr. Campbell, vice-president of the New Haven, and Mr. McGovern, a ship broker, had been in negotiation with reference to this same matter (p. 619, l. 35). Under date of October 24, 1908, Mr. Campbell wrote Mr. McGovern that he had had the matter up with Mr. Mellen, but that he did not then seem deeply interested (p. 620, l. 37). The proposi-

tion then was to sell to the New Haven the assets of the Metropolitan Steamship Company of Maine, No. 1, then in the hands of receivers, other than the Yale and Harvard (p. 619, l. 1), for $1,500,000 (p. 621, l. 28). Mr. Mellen being not then deeply interested, nothing happened, but on May 27, 1909, Mr. Campbell wired Mr. McGovern, who was then on his way to New York from California: "Are you in shape to renew last proposal, we to take the freight equipment and wharf for one-third of total consideration. This tentative only" (p. 618, l. 25). McGovern missed receiving the telegram, but during the summer got in touch with Mr. Mellen (p. 622, l. 22). He says he was introduced to Mr. Mellen by Mr. Campbell (p. 623, l. 1), and Mr. Mellen admits the introduction, and that the substance of the conversation "was in connection with securing the Harvard and Yale, I know that" (p. 1607, l. 40). McGovern renewed his proposition to sell to the New Haven the assets of the Metropolitan, except the Yale and Harvard. The conversation, according to McGovern, was as follows (p. 623, l. 19, &c.):

> A (Continuing.) A general conversation on that subject.
>
> Q With reference to the freight properties? A Yes, and a statement that I had people on the Pacific coast who were interested in taking the Yale and Harvard.
>
> Q You told him that? A I told him that.
>
> Q Did that fact interest Mr. Mellen or not? A I don't believe he expressed any opinion about it.
>
> Q I suppose you went there for the purpose of trying to make a sale? A Yes.
>
> Q And the property you had for sale at that time was what? A The assets of the Metropolitan Steamship Company.

Q That included what? A All the freight ships and wharf in Boston and Yale and Harvard.

Q You also offered him the Yale and Harvard at that time? A No, I told him that I had purchasers for the Yale and Harvard and I wanted him to buy the balance of the property.

Mr. Mellen's recollection of the conversation was as follows (p. 1610, l. 3):

Q Do you recall that Mr. McGovern said to you that he had people on the Pacific coast who were interested in taking the Yale and Harvard, or substantially that? A Substantially that statement was made to me either by Captain Goodall or Mr. McGovern.

Q Did he state to you that he had for sale the assets of the old Metropolitan Steamship Company which had passed by the receivers' sale to the reorganization committee or their representative? A I don't think he did; my impression was that he was in a position to obtain them if we would help him out on the freight boats.

Mr. McGovern was hoping to accomplish the sale in the interests of Captain Goodall and his associates (p. 624, l. 13). When he was last in California Captain Goodall had asked him to watch the situation in the East for him, and to let him know if anything resulted (p. 584, ll. 20-40). Together they watched the development of the receivership (p. 585, l. 3), and in 1909 Captain Goodall came East again (p. 585, l. 10).

During the late summer or early fall of 1909 a meeting was held at the office of the New Haven Railroad in the Grand Central Station, at which Mr. Mellen and Mr. Lewis Cass Ledyard were present. Mr. McGovern was also there (p. 624, l. 20, to p. 625, l. 10), and Captain Goodall was also there (p. 586, l. 26). At this meeting for the first time Mr. Robbins appears

upon the scene as a participant in the negotiation (Goodall, p. 586, l. 29; McGovern, p. 624, l. 33).

Captain Goodall says this was in the late summer of 1909, about September (p. 586, l. 40). Prior to this meeting Captain Goodall had been in negotiation with the Assets Realization Company, and (p. 586, l. 15) had "reached what we presumed was a satisfactory arrangement with the Assets Realization Company, and had entered into a tentative agreement with them. I was anxious to dispose of the balance of the property, except the two ships, that I had been so earnestly endeavoring to get, and I made a proposition to Mr. Mellen to sell him the freight ships and the wharf property in Boston, which was all the property the company had, except the two vessels I wanted."

Note that at that time the defendant company had not yet been incorporated. Mr. McKinnon was president of the Assets Company.

The proposition failed to go through, however, chiefly through the action of Mr. Robbins. Captain Goodall's description of the matter is as follows (p. 587, l. 1, &c.):

> Q How did that conference conclude? A Well, they looked with favor on the proposition of buying the property that I offered, and the question was as to the clearness of the title, etc., which we could give them, and I remember, among other things, there was some discussion entered into to guarantee against any liens, etc., that being a delicate situation, the proposition of the floating property at that time, and it finally resulted in Mr. Robbins, the attorney for the company, being called in and consulted in the matter, and he made an appointment, as I remember it, at that time to go down and talk it out, together with him and the Assets Realization Company, McKinnon and the at-

torney, with the idea of meeting various points that we had discussed among ourselves.

Q Did you go down to such a conference? A Yes, we went down the next day as I remember it.

Q And who participated? A Well, McGovern and I were there, and Mr. Robbins and Mr. McKinnon, and my impression is now that that conference was held in the offices of the attorney of the Assets Realization Company.

Q (*By Mr. English.*) Mr. Marshall? A Marshall was a member of the firm, yes; I think the conference was held in Marshall's office.

Q Did yon successfully carry out this proposition that you had under discussion with these various gentlemen? A No, we reached a deadlock at that meeting, and nothing could be accomplished I found.

He said, on cross examination (p. 600, l. 3):

Q As I understand you, after you had some conference with him and the others there they called in Mr. Robbins? A Yes.

Q And the net result of Mr. Robbins' entrace into the matter was that he took the matter up directly with Mr. McKinnon and you and Mr. McGovern? A Yes.

Q And that began in the late summer of 1909? A Yes.

Q That is correct? A That is right.

Q And you had pretty frequent negotiations with him for awhile after that? A No, not in that year.

Mr. Ward. With whom?

The Court. Are you referring to Robbins?

Q Yes. A No, I didn't have any negotiations with Mr. Robbins that year.

Q The thing fell flat the next day in Marshall's office? A Yes.

Mr. McGovern's description of what happened at the meeting with Mr. Mellen and the others is as follows (p. 626, l. 12):

> We stated to Mr. Mellen and the other gentlemen that we had a proposition from the Assets Realization Company to sell the entire assets of the Metropolitan Steamship Company, and that Captain Goodall, with associates of his, was prepared to buy the Yale and Harvard, and I submitted the proposition and asked whether they would buy the other assets of the Metropolitan Steamship Company.
>
> Q What was said in reply to that suggestion of yours, and who said it; who did the talking for the New Haven interests? A Mr. Mellen at first did the talking, and said that the proposition seemed like a good one, but the final word was said by Mr. Robbins, and that was, that he wanted time to think it over before closing it. He said hold on, he wanted to think it over.
>
> Q What else did Mr. Mellen say then that the proposition seemed to be a good one? A I don't recall the entire conversation. If I may be allowed to say what my impression was, I can state that they all seemed very favorable.

He said further (p. 627, l. 1):

> Q And you say the concluding part of the conversation took place between you and Mr. Robbins? A Not between me and Mr. Robbins, between Mr. Mellen and Mr. Robbins.
>
> Q And what effect was that conversation? A Mr. Robbins said, "Hold on, I want to look into this; I don't want to close anything now."
>
> Q Do you know whether Mr. Mellen gave Mr. Robbins any instructions in reference to preparing a letter accepting the proposition, or anything of that character? A Yes, he did, and that drew forth that answer.
>
> Q What did Mr. Mellen say? A Mr. Mellen told Mr. Robbins to prepare a letter.

along the lines that we had discussed, and give it to me.

Q Did you request any letter at that conference? A Yes.

Q What did you request? A I requested a letter of acceptance of the terms from them.

Q From whom did you request the letter? A From Mr. Mellen.

Q What did Mr. Mellen say to Mr. Robbins in reference to that request of yours? A He told him to prepare such a letter.

Q What were the terms which you desired a confirmation of? A That they would purchase the property at a certain price.

Q Was the price named? A Yes.

Q And when Mr. Mellen said to Mr. Robbins to prepare such a letter, what did Mr. Robbins say? A He said to hold on, he wanted to look into it; he wanted to think it over.

Q Did he say what feature of it he wanted to think over? A No.

Captain Goodall was not asked to deny that this conversation had taken place, and Mr. Mellen remembered the matter generally. He remembered distinctly a conference when Mr. McGovern was there, when Mr. Robbins and Lewis Cass Ledyard were present (p. 1611, l. 30, to p. 1612, l. 3).

Mr. Ledyard was a director of the New Haven (p. 1612, l. 36), and had been one of the special committee which had previously examined into and reported on the proposition of taking over the Metropolitan Line. Captain Goodall was also there, Mr. Mellen says (p. 1613, l. 26). Mr. Mellen also remembered that a proposition was made by Mr. McGovern at which the gentlemen named were present, to the effect that they had a proposition from the As-

sets Realization Company to sell the entire assets of the Metropolitan Steamship Company, and that Captain Goodall and his associates were prepared to buy the Harvard and Yale, and asked whether the New Haven Railroad would be willing to buy the other assets of the Metropolitan Steamship Company (p. 1613, l. 28, to p. 1614, l. 3). Mr. Mellen's testimony as to what Mr. Robbins said, was as follows (p. 1615, ll. 13-25):

> Q You were there dealing with Mr. Robbins and Mr. Ledyard? A I was depending upon their advice in my dealings with the others.
>
> Q That is an important answer. And did not Mr. Robbins say on that occasion, having regard to the fact that you were dependent on his advice, didn't he say now to you, in substance, "Hold on about this; I want to look into it; I don't want to close anything." A Now, he might; from my experience with Mr. Robbins that seems a most reasonable statement for him to make, therefore, I should not deny that he said so.

THE PLAN AS WORKED OUT AND CARRIED THROUGH BY MR. ROBBINS FOR THE ELIMINATION OF THE YALE AND HARVARD.

This interview, terminating as shown, took place in September of 1909. So far as the record shows this was the last that Mr. Mellen had to do with the matter personally. Thereafter he remained in studied ignorance of the subsequent proceedings.

At page 1634, line 25, Mr. Mellen said:

> Q Were you familiar at the time or have you become familiar since with the various details or methods employed, pursued, to accomplish the transfer of the wharf and

freight boats from the Metropolitan Steamship Company of New Jersey to the Metropolitan Steamship Company of Maine, No. 2? A I know nothing about it except as I have read in the newspapers and heard inquiries addressed to me regarding all the companies which I supposed had part in it.

Q Did Mr. Robbins advise you how this was done? A No.

Q Did you talk to Mr. Robbins about it? A I don't think I ever have, except to ask him how much and how little he had had to do with it; he said "this matter the New Haven has nothing to do with, I have other clients."

Q Whether he disclaimed it as a matter of the New Haven road business, or otherwise, did he tell you how it was done? A He did not; no one has told me; I don't know.

And again at page 1638, line 27, &c.:

Q Do you still insist that you do not know how the freight boats got into the Eastern Steamship Corporation? A No; I think they crawled in through the window somehow, but I never could find out how, and I don't know, don't know who the parties were that owned the Maine Steamship Company, No. 2, or the Metropolitan Steamship Company, No. 2, or who negotiated its transfer to the Eastern Steamship Corporation, or what the basis of the transfer to the Eastern Steamship Corporation was.

In explanation of this quotation it will appear hereafter that after Robbins had perfected his negotiations and had obtained possession of the control of the stock and physical assets of the defendant company, and that he incorporated under the laws of the State of Maine another Metropolitan Steamship Company which has been referred to in the record and testimony as Maine No. 2. Besides this it will further ap-

pear that of the assets of the defendant company which Robbins obtained, he caused to be transferred to this Maine No. 2 the freight boats and the Union Wharf, and subsequently caused Maine No. 2 to transfer the Union Wharf to the Maine Steamship Company, a subsidiary of the New Haven Railroad. Thereafter and in January of 1912 the Eastern Steamship Corporation was formed which took over all of the assets of the Maine No. 2 and the Maine Steamship Company which included all of the freight boats and the Union Wharf which had formerly belonged to the defendant company.

But while Mr. Mellen was remaining in blissful ignorance, Mr. Robbins was very active. The deal was entirely off, as far as Captain Goodall was concerned (p. 601, l. 12), and shortly thereafter Captain Goodall finished up his other business in New York and returned to California (p. 601, l. 38). Robbins, however, pursued the matter directly with Mr. McKinnon, and with Mr. Marshall, his lawyer, and also with Mr. McGovern. From the time of the interview in September at the office of Mr. Mellen, Mr. McGovern met Mr. Robbins almost continuously, and that continued up to about December (p. 628, ll. 20-26). In connection with these negotiations McGovern said (p. 628, l. 38): "Mr. Robbins told me that he had other purchasers in view outside of the New York, New Haven and Hartford, that he might interest in the proposition, and I was carrying that along with him along those lines," but he did not disclose who those purchasers were (p. 629, l. 4).

To facilitate the negotiations, Mr. Robbins took the matter up direct with Mr. McKinnon at the Assets Realization Company's office (p. 629, l. 30). It appears that even prior to the

meeting in Mr. Mellen's office in September, 1909, McKinnon had agreed to sell to McGovern the stock and other securities of the Metropolitan company (Maine No. 1) which was then in the hands of receivers; or more properly that he had agreed to sell the securities of the company which was to be organized to take over the assets and business of the Maine No. 1. This new company was not organized until November 8th, 1909, and when organized became the defendant company. With the control thus obtained it was McGovern's plan to sell the freight boats and the wharves to the New Haven railroad. McGovern's testimony on that is as follows (p. 631, l. 1, &c.):

> Q And what was the suggestion which Mr. McKinnon made with reference to that? A Mr. McKinnon agreed to sell a million dollars of the bonds, all of the stock, about a million dollars of ten year notes, $500,000 6% two year notes.
>
> Q And you say that suggestion was made to you by Mr. McKinnon before you had this final meeting with Mr. Mellen in the Grand Central? A Yes.
>
> Q At the meeting in the Grand Central with Mr. Mellen and the other gentlemen, was the subject of the sale of the stock and other securities discussed? A No, not quite that way at that time.
>
> Q How was it discussed? A We had that proposition from Mr. McKinnon to sell all those securities, and I was asking the New Haven Road to agree to buy the ships —the other ships, the freight ships and wharf, at a certain price, and give me a letter to that effect, and I was going to use that letter to finance the whole deal and buy the securities from the Assets Realization Company, and separate the two parts of the property, turning over to the New Haven their part, and the California interests their part.

Q So that you hoped to personally take over the assets, and then having done that, parcel out the physical property—you hoped to personally take over the securities and stock and then to parcel out the physical property among these various purchasers; was that it? A Not personally; I would have had people do it.

Q Your interests? A Yes.

Q You were acting as broker? A Yes, I was acting as broker.

The offer of McGovern was put in tangible form in a memorandum, which appears on page 633, as follows:

"Thomas B. McGovern Arthur C. Donnell

McGOVERN & DONNELL

25 Broad Street, New York

Cable Adress Sondonnell Telephone 966 Broad

For	$ 500,000	1st Mtge. Bonds	@ par	$ 500,000	$ 500,000
	500,000	" "	@ 80	400,000	400,000
	500,000	6% notes		500,000	490,000
	3,000,000	Stock			
	850,000	10-year notes		250,000	510,000
				$1,650,000	$1,900,000

15
4

1900000"

Q This was a part of the negotiations which you and McKinnon had from time to time in this matter? A Yes.

Q This was, I believe, discussed between you and Mr. McKinnon before you had the final meeting with Mr. Mellen? A Yes.

This is most significant. It all occurred before September of 1909, and the defendant company was not incorporated until November 8, 1909, or several months after the proposed sale of its stock and securities had been discussed. When Robbins came into the matter he took the negotiations out of McGovern's hands, and brought then to a conclusion along the very same lines.

Mr. McKinnon testified to the negotiations with McGovern, Captain Goodall and Robbins (p. 682, l. 20); first with Captain Goodall (p. 682, l. 28); then with McGovern and Captain Goodall together (p. 682, l. 35); and that the object of these negotiations was "a sale of our securities, meaning the stocks and bonds and notes of the Metropolitan Steamship Company" (p. 682, l. 36). Within thirty days thereafter Mr. Robbins entered the negotiations (p. 683, l. 16).

Mr. McKinnon says that he and Captain Goodall could agree on terms, but that Captain Goodall could not produce the money (p. 684, l. 10). This was very evident, because the New Haven Railroad refused to accept his proposition, and the Goodall-McGovern scheme predicated the New Haven as the financier of the transaction. So thereafter Captain Goodall dropped out and McKinnon continued to negotiate a loan with Mr. Robbins (p. 685, l. 27) at his office, 25 Broad street, and the net result was that the securities and the stock control, along the lines of Mr. McGovern's original proposition (p. 633, l. 20) were agreed to be transferred, and for a price of about $1,500,000, which was the amount of Mr. McGovern's original offer, through Campbell, in October of 1908 (p. 621, l. 27).

The attorney representing Mr. McKinnon and his interests was J. Markham Marshall, of the New York Bar. He says that Mr. Robbins was the man who started the matter up after the Goodall negotiations had failed (p. 827, l. 29), and that he came to his office, at 25 Broad street, New York (p. 827, l. 27). The second time he came he brought Mr. Chase with him (p. 828, l. 39).

Finally Robbins and Marshall had lunch, at the Broad Exchange building (p. 831, l. 22),

where the proposition was discussed in detail. The matters discussed were set forth in a letter from Marshall to Robbins under date of December 11, 1909 (Exhibit C. 29, page 842). Robbins wrote back suggesting that he draft a contract (p. 845, l. 32). In these negotiations between Marshall and Robbins the *sine qua non* insisted upon by Robbins was that the freight boats and the wharf should be released from the lien of the mortgage. Mr. Robbins made this insistment both at the time Captain Goodall was in the negotiations, and after he dropped out, and very evidently the mortgage which was drawn by Mr. Marshall had inserted in it release clauses which would meet such a situation. Mr. Marshall said (p. 832, l. 9):

> A The matter we discussed was this: That Captain Goodall's offer to purchase securities held by the reorganization managers, was contingent upon his being able to sell a million dollars of the first mortgage bonds of the New Jersey company to the clients of Mr. Robbins; his ability to sell the million dollars of bonds to Mr. Robbins' clients was in its turn contingent upon the ability of Mr. Robbins' clients using those bonds to obtain under the release clause of the mortgage the release of the freight steamers and the wharf property in Boston. We had discussed the details of obtaining a release of that property in consideration of the turning in of a million dollars of bonds to the trustee, to be held under the terms of the mortgage by the trustee.
>
> Q And when you speak of mortgage, you mean the first mortgage of the New Jersey company to secure the issue of bonds? A Yes.
>
> Q Did you draw that mortgage? A I did.
>
> Q I show you herewith a printed copy of what purports to be the first mortgage of the Metropolitan Steamship Company to

the American Trust Company, dated November 15, 1909; can you say whether that is one of the copies of that mortgage? A Yes.

Q And that was the mortgage which you drew and which was executed to secure the first mortgage bonds? A Yes.

Witness. The release clauses to which I just referred are in Article 9, page 43, of the printed mortgage.

See Exhibit C. 38 (pp. 1806-1808).

Mr. Marshall testified further (p. 836, l. 8):

Q And then after Mr. Goodall dropped out, the negotiations still continued between you and Mr. Robbins? A Yes; in all my discussions with Mr. Robbins, that was the key to the whole situation.

Q The freight boats and dock properties? A Yes, the ability to have the freight boats released and the dock property released was the basis of financing any purchase that he might make.

The defendant company was incorporated on November 8th, 1909. The defendant company immediately upon its incorporation executed a first mortgage designed to secure bonds to replace the bonds of the original company (Maine No. 1) and issued notes to take up similar notes of the original company (Maine No. 1). The reorganization agreement originally provided for the issuance of $3,000,000 of stock to parallel a similar issue of stock of the original company Maine No. 1. McKinnon, in order to put through his deal with Robbins had to give him a control of the stock in the company. In order to make that possible it was decided to amend the plan of reorganization so as to issue only $1,500,000 of stock, and in lieu of the remaining $1,500,000 of stock to issue a similar amount of ten-year unsecured non-interest bearing notes. These notes

went largely to the various unsecured creditors of the original Metropolitan company (Maine No. 1) and McKinnon was left in possession of a great majority of the stock which he could turn over to Robbins.

Upwards of 600 shares of this stock went to the first mortgage bondholders of the original company (Maine No. 1) to represent their unpaid coupon interest up to that date, and among the stockholders thus securing common stock are the complainants.

Some of the ten-year notes were purchased for cash, and among them are the notes held by the creditor complainants, Newbert and Noyes.

By the first of the year of 1910 Mr. Robbins very evidently had his plans perfected. The company had been incorporated, the mortgage had been drawn to fit the situation, the negotiations had been practically completed, and he was evidently satisfied that he could carry the matter through.

At this juncture Mr. Mellen writes a letter to Captain Goodall, dated January 7, 1910, which was very evidently inspired, if not actually dictated, by Robbins. This letter was as follows (p. 1599, l. 25):

> "The New York, New Haven and Hartford Railroad Company. New Haven, Connecticut. President's office at New York City, January 7, 1910. Mr. H. W. Goodall, New York, N. Y. Dear Sir: We have given consideration to your offer to sell to this company certain steamships for $1,500,000, but have come to the conclusion that it is impossible to accept it. Yours truly, C. S. Mellen, President."

This letter was evidently written for the purpose of the record, as the Vice-Chancellor held (p. 2144, l. 36). There was no earthly reason why it should have been written. Captain Goodall's efforts and negotiations had terminated unsuccessfully, and he conceded that they had amounted to nothing. He could give no satisfactory reason why such a letter should have been written him (p. 602).

Mr. Mellen had had nothing to do with the transaction since the conference of September, 1909, had terminated by Mr. Robbins' request to look into the matter. After that, by his own admission, he knew nothing whatever about the proceedings, and he had carefully refrained from inquiring. If he signed his name to the letter, he very evidently did it at the request of Robbins, and without asking why. No reason is suggested in the case why the letter should have been written, except for the sake of the record.

The plot moved swiftly from this point on. Mr. Robbins called to his aid a series of dummies to act for him. These were Warren D. Chase, his trusted friend of fifteen years standing (p. 293, l. 35), and former law student and associate in the New Haven Railroad (p. 471, l. 35, to p. 472, l. 15; p. 216, l. 30). He also, through Chase, secured the services of a Mr. Nicholson, a lawyer of New York, and a Mr. Canfield, a lawyer of Hartford, Connecticut. These three were his chief agents in the matter. In addition he employed other lawyers and corporations to carry out his scheme.

The first thing to do was to secure the release of the freight boats from the lien of the mortgage. It will be remembered that Mr. Marshall testified that this was the *sine qua non* of the transaction. Accordingly on February 16, 1910,

the firm of Wing & Russell, lawyers of New York, made a proposition to the Metropolitan Steamship Company to buy its freight boats and its car floats—all its floating equipment except the Harvard and Yale—for $650,000. This offer appears in the minutes of the directors of February 18, 1910, printed at pages 2016 and 2017. Mr. Wing, of that firm, was a brother of President Wing of the First National Bank of Boston, financiers of the New Haven Railroad Company (p. 1052, ll. 20-30). The offer was accepted by the directors of the Metropolitan Company, of whom McKinnon was one (pp. 1749-1750), acting at the request of Robbins (p. 735, ll. 20-30).

Mr. McKinnon conducted the negotiations with Mr. Robbins, resulting in the sale of the physical property. These included the floating equipment to Wing & Russell, and later, the Union Wharf, at Boston, to Mr. Canfield. The transfer of these physical properties was a part of the agreement for the sale of the securities. Mr. McKinnon testified (p. 700, l. 13):

> Q Did you conduct the negotiations which resulted in the sale of that physical equipment? A It was part of the general agreement for the sale of our securities.
>
> Q It was a part of the negotiations which had been conducted with Mr. Robbins and Mr. Nicholson and Mr. Chase? A Yes.

And again at page 702, l. 39:

> Q Was the arrangement for the sale of this physical property embodied in the terms of the agreement which was signed, or was the arrangement made before the agreement was signed? A I think the arrangement was made before the agreement was signed.
>
> *Mr. Faulks.* I think we are entitled to know whether it was made in writing or not.

Q Was the arrangement made in writing or was it a verbal understanding? A I think that was verbal.

Q Do you remember at whose suggestion that arrangement was made? A The terms of the agreement were arranged with Mr. Robbins.

Q And this plan for the sale of this freight boat equipment before the formal written agreement was signed, was part of Mr. Robbins' plan and suggestion? A Yes.

Q The final transfer of the title to this freight boat equipment before the formal written agreement was signed, was part of Mr. Robbins' plan and suggestion? A Yes.

Q The final transfer of the title to this freight equipment took place, you say, in Boston? A I am quite sure it did.

Mr. McKinnon arranged with the American Trust Company to have the freight boats released from the mortgage, in a letter which he wrote them under date of February 18, 1910 (p. 1745, l. 30, to p. 1747, l. 10), and Calvin Austin, the steamship man, appraised this freight equipment in February, 1910. He says he did so at the request of Mr. Fessenden, who was president of the American Trust Company (p. 1701, ll. 10-20). He made no charge for the service, however. Very evidently the trust company had arranged with Mr. Robbins, that he (Robbins) should take care of Mr. Austin's bill, if any bill was rendered, and accordingly Mr. Austin wrote Mr. Fessenden that he had no charge to make (p. 1864, l. 30). The reason he wrote such a letter was that Robbins requested him to do so. (See page 1865, l. 40.) Mr.

Austin's letter was as follows (Exhibit C. 92, page 1871):

Boston, Oct. 13, 1910.

My dear Mr. Fessenden:

President, American Trust Co.,
50 State Street, Boston.

Mr. dear Mr. Fessenden:

I am in receipt of a letter from Mr. Edward D. Robbins, Attorney for the Metropolitan Steamship Company, asking me to write you, stating that I will make no charge for services as appraiser on the boats of the Metropolitan Steamship Company of Maine.

I, herewith, enclose you a copy of my letter to you August 10th.

Yours truly,

President.

A/S
Enc.

Very evidently, too, the trust company arranged with Robbins to pay the entire expense of the proceedings, as Exhibit C. 72 (p. 1857), and C. 74 (p. 1859) shows. This last letter is as follows:

Mr. Douglas Nicholson, Treasurer,
Metropolitan Steamship Co. of New Jersey,
203 Broadway, New York, N. Y.

Dear Sir:—

We enclose herewith bill covering our services and expenses in connection with the release of the Freight Steamers and also the release just given of the Union Wharf property.

Our understanding with Mr. Robbins was that these bills would be promptly paid and we would thank you if you will communicate with Mr. Robbins to the end that we may have early remittance therefor.

Thanking you in advance for the courtesy, we beg to remain

Very truly yours,

CHB/M
(Encl.)

Secretary.

Upon receipt of that letter Mr Nicholson sent to the trust company a check for $2,802.50, to pay their bill. See Exhibit C. 77 (p. 1862):

An interesting feature of this transaction is that the $650,000 which was the price paid by Wing & Russell, acting for Robbins, for the freight equipment, was paid in bonds, and the bonds which went to make the payment were the identical bonds which Mr. McKinnon later sold to Mr. Robbins as belonging to the Assets Realization Company when the matter was finally closed up. Mr. McKinnon testified as to this (p. 703, l. 27):

> Q Do you know what was paid for this freight equipment? A I think the price was $650,000.
>
> Q How was it paid, in cash or securities? A In securities.
>
> Q Do you remember what securities? A First mortgage bonds.
>
> Q Bonds of what company? A Of the Metropolitan Steamship Company.
>
> Q The New Jersey Company? A Yes.
>
> Q And the purchasers at that sale were whom; Wing & Russell, you say? A Yes.

See also his testimony, pages 760-764, and Exhibit C. 94 (p. 1873), where the bonds are listed in detail by their serial numbers; and Exhibit C. 50 (p. 1828), where the cashier of the Chase National Bank advises the secretary of the American Trust Co. that they had delivered to Mr. McKinnon the release in exchange for the bonds which are listed.

These bonds, which were thus delivered to Wing & Russell, were in turn turned over to the American Trust Company, the trustee of the first mortgage bonds, and the freight equipment was released from the lien of the mortgage. The Chase National Bank of New York acted for

the trust company in the matter (see Exhibit C. 43, page 1817). The trust company sent the release to the Chase National Bank and the bank forwarded the bonds (see testimony of Mr. Bowen, secretary of the trust company, page 903).

Remember that the bonds were turned over to Wing & Russell for Robbins in February of 1910, and the release then attended to. The matter was not actually closed out between Robbins and McKinnon, or the money paid until March 5th, 1910.

The other physical property belonging to the defendant Metropolitan Steamship Company, apart from the Harvard and Yale, was the valuable Union Wharf, at Boston. To secure this, Mr. Robbins produced Mr. Canfield as a purchaser, and he made a proposition to the Metropolitan Steamship Company to purchase it for $350,000. (See minutes of special meeting of the board of March 4th, 1910, pages 2018-2022.) The agreement was that Mr. Canfield should pay either in cash or at his option in the form of 350 bonds (p. 2022, l. 15).

These $350,000 of bonds were also sold to Robbins by McKinnon, of which $347,000 belonged to the Hudson Navigation Company, of which McKinnon was then president (p. 706, l. 30, and p. 764, l. 24).

These bonds were sold for $280,684.45 (p. 774, ll. 10-20), and Robbins so manipulated things as to require the Metropolitan Steamship Company, the defendant, to furnish the money with which to buy the bonds from the Hudson Navigation Company, and then used them to cancel the lien of the mortgage on the Union Wharf. (See conclusions of Vice-Chancellor Lane, page 2151, ll. 18-30.)

To put the transaction through, Canfield entered into an agreement with the defendant Met-

ropolitan Steamship Company to purchase the Union Wharf for $350,000. The agreement is printed at page 2018, l. 30, through page 2022. It was dated March 3rd, 1910 (p. 2022, l. 35). At this time Canfield did not own the bonds.

The price of $350,000 seems to have been a purely arbitrary one, for no appraisal was made at that time, nor was a request made at that time to have the lien of the mortgage cancelled as to the wharf. Such a cancellation took place later on, when Robbins subsequently transferred the property. (See Exhibit C. 64, p. 1849.)

The possession of the bonds, however, put Robbins in control of the situation where he could subsequently obtain a release.

The consummation of the whole matter took place on March 5, 1910, at the office of the Chase National Bank. The arrangement between Robbins and McKinnon was embodied in an agreement entered into between the Assets Realization Company and Robbins' dummy, Mr. Nicholson. It appears as Exhibit 6 (p. 1750, &c.). By the terms of this Robbins purchased for a total expenditure of $1,500,000 the following from the following vendors:

From the Assets Realization Company, 14,323 shares, out of 15,000 shares of the capital stock of the company.

$449,035.90 of 10-year gold notes.

~~$449,035.90~~ of 2 ~~10~~-year gold notes.

$553,000 of 1st mortgage bonds.

$375,923.14 of demand notes (p. 1751, ll. 1-27).

The Assets Realization Company also agreed to deliver 50 shares of stock, $234,859.31 of 10-year notes, and $100,000 of first mortgage bonds (p. 1751, l. 30, to p. 1752, l. 10).

The purchase price was split up into two items of $1,400,000 and $100,000.

Of the $1,000,000 of bonds transferred, $553,000 came through the Assets Realization Company, as constituting the Metropolitan syndicate, $100,000 from the National Bank of North America, of which Mr. McKinnon was the liquidating agent, and $347,000 from the Hudson Navigation Company (Carrington, p. 813, l. 13), paid for with money furnished by the defendant company.

In addition to these specific securities, certain cash balances, the minute books, etc. (p. 1753, l. 35).

The receipt (Exhibit C. 7, p. 1759) shows what Mr. Nicholson received, including a "duplicate deposit slip Chase National Bank, covering deposit $266,387.13" (p. 1759, l. 23).

A considerable mystery surrounds this sum of money. Apparently $95,000 of it represented a return which Mr. McKinnon made out of the $1,400,000 paid him (p. 694, l. 15). It never went through the books.

Mr. Chase was pressed to testify on this (p. 255, l. 30). He would not deny that there was upwards of $280,000 in the bank at the time of the transfer (p. 256, l. 10) and claimed not to know whether or not that money was used to purchase the $357,000 of bonds from the Hudson Navigation Company (p. 256, l. 25).

He then was asked this (p. 256, l. 36):

> Q Who does know that? A I couldn't tell you. Mr. Robbins, of course, arranged these things at the time. It is possible I knew them.

He testified further as follows (p. 262, l. 39):

> Q Have you any knowledge, of any other source, of that money which was paid by Mr. Canfield to the Hudson Navigation Company

for those bonds? A No, I have no recollection.

Q I didn't ask you for your recollection. I asked you if you have any other knowledge of any other source, of that money in Mr. Canfield?

Mr. Ward. You are asking for hearsay information.

Q (*By the Court.*) Do you know of any other source from which Canfield could have gotten that money? A Only that Mr. Robbins was to supply whatever was needed; I presume I knew at the time.

Q So he either got it out of that fund from the deposit which the company was taking over, or he got it from Mr. Robbins? A Yes.

Nicholson, the treasurer of the company, and who officially received this deposit of $266,387.13, had no idea what became of it. His testimony was as follows (p. 450, l. 16):

Q You knew the bonds were purchased from the Hudson Navigation Company, did you not? A Not at that time.

Q When did you first find that out? A I think soon after this case started.

Q That is the first you ever heard of it? A I think it was.

Q Had it all been drawn out before you got in? A I haven't any recollection of having drawn out any large sum of money.

Q Then will you tell the court what became of that $266,387.13 which the company received, and let me add to the question the fact that the accountant who was on the stand could not show us what became of it; can you tell us what became of it; he couldn't show us from the books what had become of it? A No, I cannot.

Q You were treasurer of the company? A Yes.

Q You had power to disburse the money? A I did.

Q And so far as you are able to say the large sum of over two hundred and sixty-six thousand dollars completely disappeared without your knowledge? A Oh, I don't say that; I say that I haven't any recollection of having paid out any large sum of money at that time.

Mr. Robbins, who knew all about it, did not take the stand.

Mr. Goodloe, the accountant put on the stand by the defendant, testifying from the books, said that on March 5th there was a balance of $688.37. He could point to nothing in the books to show that the company had any considerable sum in excess of the $688 on March 5th or 6th (p. 385, l. 10). The books did show that Mr. Canfield was charged on March 3, 1910, with $350,000 of bonds, which are the same bonds which went to pay for the Union Wharf property (p. 387, ll. 1-20). The books failed to show, however, where the money came from which paid for that. His testimony is as follows (p. 387, l. 20):

Q Now, do you know from the books where any part of those $350,000 bonds came from? A Not other than that entry.

Q You don't know anything about that? A Not only what the books show.

Q Now, do the books show whose funds it was that purchased those bonds?

The Court. Mr. English, it is so perfectly clear as to just whose funds it was where that money came from you are simply wasting time.

Mr. English. This gentleman produced a statement which he says takes its source from the books.

The Court. Those books would not necessarily show that thing.

Mr. English. I want to show while he may be perfectly correct in his figures, the books are of no value at all in the case,

that is what I have got in mind. If your Honor is prepared to say that as a matter of fact, there is no use of my wasting time to prove it.

The Court. No, but I am prepared to to say this, that it would not be natural for an entry to be in those books that would show the ultimate source of that money, it is not expected to be there. He has said distinctly that he cannot say now that they do. Apparently if it does appear in any books it is in the New York agency books which are not here.

When counsel for the complainant pressed Mr. Goodloe to dig into the books to ascertain the fact, if he could, he protested, and counsel for the defendant objected (p. 384, ll. 10-35).

The turn-over of the fund and the securities which took place at the office of the Chase National Bank, March 5th, 1910, was attended on by Mr. Nicholson, Mr. Chase, Mr. Canfield and Mr. Robbins; also Mr. McKinnon and Mr. Carrington (p. 695, ll. 15-40). Mr. Robbins modestly stepped out of the room when the checks were actually turned over (p. 695, l. 18). He was sufficiently interested, however, to carefully check over the securities. Carrington says (p. 777, l. 14):

Q Was Mr. Robbins in the room at the Chase National Bank when the consideration was paid over on the one hand and the securities delivered on the other? A Yes.

Q Present at that time, or did he go out and come back afterwards, or don't you remember? A I don't remember; it took some little time to count the securities and all that. When the actual deliveries were made, I know that I was in a little office in the Chase National Bank, which was the president's office, and Mr. Robbins was in and out of the general banking room; I cannot say whether he was or not when the actual delivery was made.

Q Did Mr. Robbins take any part in the counting over of the securities? A Yes.

Q He was interested in them? A He took part in it.

Q Whether interested or not, he took part in it? A He took part in it; I assumed it was due to interest.

And again (p. 778, l. 3):

Q Did Mr. Nicholson pay any attention to the counting of the securities? A I don't remember that.

Q You do remember that Mr. Robbins did? A I do remember Mr. Robbins.

Q And who else, yourself? A Yes.

Q Anybody else that you remember? A Yes, some of the office force and Mr. McKinnon.

Q So, apparently, you on the one hand and Mr. Robbins on the other superintended the counting and checking up of those securities? A Mr. Robbins was there and he took an active part in it.

Q And you did? A I did.

Q And the clerks did the manual work, so to speak? A Yes.

Q When was the first time that you met Mr. Nicholson in this transaction? A I do not think I ever saw Mr. Nicholson until that day.

Q Had you ever heard of him in connection with the matter up to that day? A He was mentioned in the contracts.

Q Prior to his name being incorporated in the contract had you ever heard of him in connection with it? A No, never had.

The closing of this transaction put into the possession of Mr. Robbins 14,373 shares of the stock of the company, out of 15,000 shares, which of course, carried with it the control of its assets; all of its two-year notes and demand notes, over $600,000 of its 10-year notes, and $1,000,000 of its bonds. With these bonds he was able to secure a clear title to the freight boats and the wharf, and

with the control of the stock he was able to deal with the remaining assets, which were the Harvard and Yale, as he saw fit.

This matter was ostensibly put through by the directors, the directorate then being controlled by Mr. McKinnon. The minutes of the directors were carefully prepared to set forth the transaction in the best possible light (see Exhibit D. 22, p. 2011, l. 25, to p. 2028, l. 15). The whole transaction was part and parcel of the Robbins scheme. It so appears from the testimony of Mr. McKinnon (p. 735, l. 20):

> Q Did you and your associates in the board of directors of the New Jersey company, the defendant, consent to this sale of the freight boats at the request of Mr. Robbins and as part of your negotiations with him, or simply was it of your own motion? A It was part of the entire understanding.
>
> Q Was it at his suggestion? A Yes.
>
> Q And at his request? A Yes.
>
> Q And did he provide the purchaser. A Yes.
>
> Q During the negotiations did he say he would provide a purchaser if you would consent to the sale? A Well, I do not know just what he said, but he did provide a purchaser.

And again (p. 736, l. 25):

> Q During your negotiations with Mr. Robbins, was it suggested by him that your company, the New Jersey company, should also sell the wharves in Boston. A Yes.
>
> Q Did you and your other directors resolve that the sale be made at his request? A Yes.
>
> Q And did he say that he then had or would secure a purchaser? A Yes.
>
> Q Either one or the other? A Yes.
>
> Q It appears from this same resolution which is attached to Exhibit C. 5, that the

officers of the defendant company were to take such steps as might be necessary to secure the release by the trustee under the mortgage from the lien of the mortgage as applying to these freight boats; did you as president of the company make any efforts to bring about the lifting of the lien as applied to these freight boats? A Yes.

On March 5, 1910, the same day that the securities were turned over, the Metropolitan Steamship Company, the defendant, through its directors, authorized the leasing of the Harvard and Yale to the Metropolitan Steamship Company of Maine No. 2 (p. 2031, l. 10), and also authorized that company to purchase the quick assets of the defendant company. A form of lease was approved (p. 2031, l. 25).

The Metropolitan of Maine No. 2 had been incorporated on March 1st, 1910 (p. 47, l. 31) by Robbins, for the purpose of receiving the freight boats and operating the Harvard and Yale. It is conceded that Robbins owned Maine No. 2 (defendants' brief, page 14). The freight boats were transferred to this Maine No. 2, and the Harvard and Yale leased to it, so that Robbins completely controlled and dominated the situation. The defendant company was now in the hands of its enemy.

The proceedings on the record were ratified by the directors. The annual meeting of the stockholders of the company was held in November of each year. In November of 1910, the 14,373 shares of stock of the company which was owned by Robbins, went through the motions of ratifying what the directors had done. The minutes are carefully written, and appear as Exhibit D. 32 (page 2065, l. 1; page 2068, l. 35).

This meeting of the stockholders was held, however, without notice to the remaining 627

shares of stock. The by-laws of the company had evidently been prepared with reference to just such a situation. They provided that notice to the stockholders might be by publication. The language of section 2, article II of the by-laws is as follows (p. 328, l. 25):

> "The annual meeting of the stockholders shall be held on the third Friday in November in each year, at two o'clock p. m., if not a legal holiday, and if a legal holiday, then on the next succeeding business day thereafter, when the stockholders shall elect by ballot the directors for the ensuing year, as hereinafter in Section 1 of Art. 3 of these by-laws provided." * * * * "At such annual meeting any other business authorized or required to be transacted by the stockholders may be transacted. Notice of which annual meeting shall be given either by publication thereof once in each of the three calendar weeks next preceeding the meeting, in at least one newspaper in each of the following places: Jersey City, N. J., and New York, N. Y., or by mailing a copy of such notice at least ten days prior to the meeting to each stockholder of record at his address as the same appears on the books of the company."

No personal notice was given to any of these stockholders, but notice of the meeting was published in the Jersey Journal, in Jersey City (p. 333, l. 30), and the stockholders, outside of the Robbins interests, never heard of the matter until just shortly before the bill was filed. (See Watt, p. 982, l. 22, to p. 983, l. 24; Mossman, p. 984, l. 10; Jennie R. Morse, p. 139, l. 37).

Mr. Nicholson admitted that no effort was made to locate or notify the minority stockholders (Nicholson, p. 459, l. 32, to p. 460, l. 40).

WHERE DID THE MONEY COME FROM WHICH WAS PAID OVER TO THE McKINNON INTERESTS FOR THE STOCK AND OTHER SECURITIES?

It is proved absolutely in the case that this money was furnished by the New Haven Railroad.

It was arranged for by Mr. Robbins. Mr. Chase testified (p. 223, l. 10):

> "The financial transactions in connection with this were arranged in advance by Mr. Robbins; the details in connection with the payment and obtaining the money I handled at the time."

and again (p. 223, l. 28): "Mr. Robbins arranged for financial matters in advance." Mr. Robbins did not take the stand, so just what his arrangement was is not explained. The complainants spent many days and examined many witnesses in an effort to trace the source of the money. These witnesses, the testimony of all of whom is set forth in the record, were Colletti (p. 1332); Pilat (p. 1336); Fueschel (p. 1340); Talley (p. 1355); Marston (p. 1367); Craig (p. 1372); Roche (p. 1574); Keidel (p. 1392); Cohn (p. 1432); Hyatt (p. 1442); McGregor (p. 1448); Szymanski (p. 1453); McNeil (p. 1458); Powelson (p. 1518); Jay (p. 1530); Rush (p. 1541); Garretson (p. 1545); Laughlin (p. 1548); Reid (p. 1550).

It took months of labor of counsel to ascertain the facts about this payment. The Vice-Chancellor found that had Robbins taken the stand the material testimony might have been put in in one day (p. 1328, l. 32). The money was actually paid over by a cashier's check. The money started with a credit to the Billard Company for $1,700,000 from the Farmers Loan

& Trust Company. To conceal the transactions fifteen different checks were drawn representing this same fund. The money went through several banks. A corporation—The New England Securities Company—was incorporated for the sole purpose of depositing and drawing a check and every effort was made to conceal the transaction. The Vice-Chancellor outlines the proceedings in his conclusions on the facts (pp. 2149 and 2150). He concludes his recital with the pertinent exclamation:—"I have never heard of such a financial maze" (pp. 2150-2151). The defendant's brief claims that $3,000,000 was paid (p. 25), but that was merely a colorable transaction. Chase finally admitted that all that was actually used was $1,500,000, which was the amount of money borrowed by the Billard Company (p. 32, ll. 21 to 32).

The Billard Company was the New Haven's subsidiary. It appears from the testimony of the secretary of the New Haven, Mr. Clark, that such was the fact. A resolution of the Board of Directors of the New Haven R. R. approved by Mr. Clark as the secretary of the Board, shows that the New Haven R. R. used the Billard Company in connection with its Boston & Maine R. R. transactions, and that the report of the executive committee of the Board of the New Haven R. R. dealing with that matter contains this (p. 1311, l. 15):

> "provided that all the shares of stock of the Billard Company and all profits actually or nominally realized by Mr. Billard less a reasonable compensation for his services and risks, and the amount of his actual expenses in connection with the purchase and sale of Boston and Maine stock be first vested in the New York, New Haven & Hartford R. R. Company and subject to the disposition of its board of directors."

And in the report which Mr. Mellen as president of the New Haven R. R. made to the Board he set forth a profit of over $1,600,000, which nominally accrued to the Billard Company on the Boston & Maine transaction, and then said in his report (p. 1313, l. 30), that "he was to secure an assignment of this profit, but did not have time to do so in advance of this meeting; that he holds the same subject to an adjustment of interest with Mr. Billard upon his return to New Haven and asks that his action in the matter, so far as reported, be approved."

When it came to obtain the money to put through this transaction, the Billard Company was chosen as the medium to that end. It gave as security to Farmers Loan & Trust Company $3,000,000 in notes of the New England Investment & Securities Company (p. 1359, l. 37), to secure a loan of $1,700,000.

Mr. Mellen said that the New Haven had guaranteed payment of these notes in order to make them marketable (p. 1653, ll. 12-13). Mr. Mellen said further that in 1910 the Billard Company owned all the notes of the New England Investment & Securities Company (p. 1651, l. 28).

This loan from the Farmers Loan & Trust Company to the Billard Company of $1,700,000 was made on March 4th, 1910—the day before the transaction was closed out by Mr. Robbins. The loan ran until March of 1911, when it was paid off and the collateral taken up. On March 1, 1911, the New England Navigation Company deposited to the credit of Billard Company $2,000,000 (p. 1363, ll. 1 to 15; p. 1373, ll. 10 to 20). With the money thus obtained, the Billard Company paid off its loan with the Farmers Loan & Trust Company and took up the collateral.

This appears from the testimony of Mr. Talley (pp. 1355 to 1367), and Mr. Craig (p. 1372, l. 22; p. 1373, l. 30).

The money of the New England Navigation Company was the money of the New Haven R. R. It is conceded that the New Haven R. R. owned the New England Navigation Company.

EVENTS FOLLOWING THE SALE OF MARCH 5, 1910.

With the completion of the proceedings of March 5th, 1910, Robbins was left in entire control of the situation. The Harvard and Yale were operated for the season of 1910 by the Metropolitan Steamship Company of Maine No. 2 which was owned by Robbins. The operating man was Calvin Austin, said to be one of the most prominent ship men on the Atlantic Coast. Be that as it may, he was a mere dummy in the hands of Robbins. Although ostensibly president and operating man of Metropolitan of Maine No. 2, he knew nothing about the company's business whatever, except the operating end of it. Whatever he did he did at the request of Mr. Robbins. In the fall he put the Harvard and Yale in shape to go around the Pacific Coast because Mr. Robbins asked him to (p. 1026, l. 10). He became president of the company because Mr. Robbins asked him to (p. 1007, l. 10). When he became president he did not know whether Maine No. 2 had any financial obligations or not (p. 1056, l. 40). At the time he became president the Maine No. 2 owned the four freighters (p. 1015, l. 30), and operated the Harvard and Yale under agreement which was in existence at the time he became president (p. 1006, l. 8). He did not know

how much had been paid for the various properties (p. 1110, l. 8).

At the time he became president they did not own any wharf property (p. 1019, line 35). He never knew who owned the stock of Maine No. 2 of which he was president (p. 1018, l. 27).

The Court will remember that the defendant company was organized to continue the business and take over the property of the previous Metropolitan Steamship Company of Maine No. 1, which had been sold out at receiver's sale. The plan of reorganization contemplated just that thing (see Exhibit C. 1, pp. 1730-1755). The security holders of the former company who exchanged their securities for those of the defendant company understood it that way. This is apparent in addition to the terms of the reorganization agreement from the attitude which these parties in interest took in the fall of 1910 when it became noised abroad that the Harvard and Yale were to be sent to the Pacific Coast.

Thus it appears in the testimony of Mr. Carrington that when the matter was reported in the newspapers, some of the bondholders and stockholders called upon him about it (p. 799, l. 27) and he in turn sought out Mr. Robbins. His testimony is (p. 801, l. 12, to p. 802, l. 25):

> Q Did you seek the appointment with Mr. Robbins for the purpose of discussing this matter with him? A I did.
>
> Q When, relative to the consummation of the matter as per Exhibit C. 6; when after that? A Sometime after, I think it was in the following summer. Mr. McKinnon went to Europe the following summer, and it was during the period he was away.
>
> Q Did you make your appointment with Mr. Robbins by telephone or by letter? A My recollection is that I called him up and got him in New Haven and made an appointment to meet him in New York.

Q And as a result of that appointment the conference was held? A Yes.

Q Can you tell us what you said to Mr. Robbins and what he said to you relative to the transfer of the Yale and Harvard to the Pacific coast? A I think I have already testified to the fact that I called to his attention to the fact that a great many people interested in the company were very much disgruntled at that procedure, and that it was not in accordance with the agreement we had at or about the time of the closing of the transaction of the sale of our securities, and my recollection is that he said that the New Haven Railroad had nothing to do with it, and that he did not care to discuss it with me; it was a very short meeting.

Q Did you seek out Mr. Nicholson, your purchaser, when that rumor of the transfer came about? A No, I made no effort to.

Q Did you seek out Mr. Chase, his counsel? A No.

Q Did you seek out Mr. Canfield who appeared as the purchaser? A No.

Q Why did you go to Mr. Robbins? A Because I considered he was the man that knew about it and had made the agreement which was, I thought, being repudiated, and that he was the man that controlled the situation.

Mr. Fernald, one of the complainant stockholders, testifies that he appealed to Mr. Robbins also after he had learned from Austin that the Harvard and Yale were about to be sent to the Pacific Coast. His testimony was as follows (p. 971, ll. 3-35):

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

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

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

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

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

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

The paper which Robbins wrote out appears as Exhibit 95 (p. 1874) is as follows:

The steamers Yale and Harvard have had an excellent season and it has been determined instead of laying them up for eight months to deteriorate at a dock, to use them during the winter on the Pacific coast, where a large business is awaiting vessels of such a type. It is expected that they will earn enough a good balance over and above all operating expenses including the expense of the voyage around now and also of the voyage back in the spring, if it is decided to bring them back for next summer's business between New York and Boston.

Mr. Fernald also sought out Mr. Mellen at New Haven (p. 973, l. 16), "because I considered

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

He also called Mr. Mellen on the 'phone (p. 973, l. 39) within a few days after his interview with Mr. Robbins (p. 974, l. 2).

He also called upon the late Richard Olney, one of the New Haven counsel, and protested to him, and Mr. Olney in his presence called up Mr. Robbins (p. 975, ll. 1-20), and as a final effort Mr. Fernald went to Mr. Robbins the next day and appealed to him again, this time at the State House in Hartford (p. 975, l. 34, to p. 976, l. 18).

ATTEMPTED JUSTIFICATION BY THE DEFENDANT.

The defendant seeks to justify the transfer of the Harvard and Yale on the ground that the financial condition of the company made it necessary.

It is claimed that the defendant company was at that time practically bankrupt. If so, it was a created bankruptcy. It will be observed from the memorandum of Mr. Robbins, which he gave to Mr. Fernald, that in 1910 when the Harvard and Yale were operated by Maine No. 2, they had an excellent season. In the year previous, 1909, when they were operated by the receivers, they also were financially successful. In the letter which the defendant company, by Mr. McKinnon, wrote to the American Trust Company in reference to the cancellation of the bonds on the freight ships, he said (p. 1746, l. 22).

> "The other hand, the operation of the Yale and Harvard has always resulted in a very handsome profit."

Mr. Morse said that their earnings were $60,000 a month (p. 181, l. 20), and that at the present time, since the Cape Cod Canal has been opened, they would be able to run the entire year round (p. 181, l. 10).

Not only are these the facts, but it is very evident that the Harvard and Yale were loaded up with extra expenses for the sake of bringing down their net earnings during the time they were operated by Maine No. 2 during the summer of 1910. At the time they were taken over by Mr. Robbins they were coal burning vessels. They were changed to oil burning ships at the cost of $25,000 apiece, or $50,000 (Austin, p. 1029, l. 37). After it was decided to send them to the Pacific Coast it cost $47,000 more to change them back to part coal and part oil burning (Austin, p. 1021, ll. 1 to 10; p. 1029, l. 37), and the defendant company paid for that (p. 1030, l. 10). The insurance on them cost $50,000 (p. 1021, l. 11). That in itself represented $150,000 which had to be paid by the defendant company and all it was receiving at the time was 15 per cent of their gross earnings under the operating agreement with the Maine No. 2.

Assuming that the earnings of the ships were $60,000 a month each for the four months of the season, would be a total earnings of $480,000, 15 per cent. of which would amount to $72,000. Out of this the defendant company had to pay over $100,000 for two overhaulings of the ships, $50,000 for insurance, besides 5 per cent. interest on $3,000,000 of bonds, and interest on $500,000 of 6 per cent. notes, and other expenses. No wonder that the cry is that the company was insolvent, and no wonder either that the Vice-Chancellor found that its insolvent condition was a created one (p. 2154, l. 3).

THE NEW HAVEN WAS CAREFUL TO PRESERVE FOR ITSELF THE GOOD WILL OF THE HARVARD AND YALE.

The Court will remember that about the time the Yale and Harvard were under construction, the New Haven Railroad built three fast freight boats. These were built with a view to their convertibility into passenger steamers, and as Mr. Mellen expressed it (p. 1642, l. 15):

> In the back of our heads we had the thought that we should use them to compete with the Yale and Harvard; therefore they were built with a view to a quick and ultimate conversion into passenger boats.
>
> Q In other words, if the Yale and Harvard were still running between Boston and New York you could convert them into passenger boats and compete with them? A I think that is what I had in mind.
>
> Q But as they went around to the Pacific coast— A They were still converted just the same.
>
> Q They were converted then to take the place of the Yale and Harvard? A To fill that line.

They originally cost $900,000 each (p. 1643, l. 30). Two of them were converted into passenger steamers at an expense of $400,000 each (Austin, p. 1013, l. 39).

One of the signfiicant things in the case is that as soon as Robbins had completed his deal with McKinnon, the New Haven Railroad began to convert two of these freight ships into passenger steamers, to take the place of the Yale and Harvard. It took some time to convert them, so the Yale and Harvard were operated by the Maine No. 2, which Robbins owned, during the season of 1910, and on March 19, 1910, the railroad began to convert two of the freight

boats into passenger ships (Austin, p. 1002, l. 28; p. 1013, l. 25; p. 1072, ll. 30-40).

When the Harvard and Yale went to the Pacific Coast they were ready to and did take their place for the season of 1911.

The reasons the New Haven Railroad began at once to convert their two freight ships into passenger ships were two fold: First, to prevent any other company from securing the traffic, and second, to preserve the good will which the Harvard and Yale had already earned for the route.

Robbins regarded this good will as very valuable.

Chase said that the Maine corporation, No. 2, was named Metropolitan Steamship Company as a matter of good business judgment (p. 543, ll. 30-40).

Galen L. Stone found it profitable to advertise the present line operated by the Eastern Steamship Corporation in the name "Metropolitan Line," so as to get the benefit of the good will which had previously been earned by the Harvard and Yale (p. 573, ll. 10-20).

In the defendants' brief (p. 6) it is claimed that a valuable good will was built up on the Pacific Coast. If that is so, the defendant company gets no benefit from that good will, but it goes to the lessee which operates the boats. The brief, however, says nothing about the loss of good will which the defendant company sustained by the transfer of the ships. This good will was regarded by the New Haven interests as very valuable, as already suggested as appears from the fact that when Robbins incorporated his Maine No. 2 he gave it the same name as the defendant company—Metropolitan Steamship Company. Chase admits that this was to pre-

serve the good will of the defendant company, and to secure the benefit of its business (Chase, p. 543, ll. 30-40).

When the converted freight ships went on this line in 1911 they continued the same run as the Harvard and Yale, and by virtue of the situation stole the good will which the Harvard and Yale had previously had. Galen L. Stone, a dominant factor in the Eastern Steamship Corporation, which subsequently obtained these ships from the New Haven, admits that they then advertised these ships under the name "The Metropolitan Line." His testimony on this was (p. 572, l. 33):

> Q What is the name of the line, or by what name is the line known which your corporation operates between Boston and New York? A Familiarily and for a long time as the Metropolitan Line.
>
> Q You still call that the Metropolitan Line? A Yes.
>
> Q Those ships, the Massachusetts and Bunker Hill, are known to the public as the Metropolitan Line? A In so far as we are unable to change it to Eastern Steamship Line, yes; we are gradually changing it.
>
> Q Without reference to your ability to change it, it is still known to the mind of the public as the Metropolitan? A Without doubt, to a great number.
>
> Q And so advertised? A Yes.
>
> Q I imagine you are able to change the form of advertising if you want to? A We find it profitable to still include Metropolitan line in smaller type.
>
> Q Still attached to some of the good will out of the old wreck, isn't that right? A Without doubt.
>
> Q And that you get the benefit of in operating your present ships? A Yes.

The freight boats are also still operated under the name of the Metropolitan Line (p. 573, l. 30).

Now that the Cape Cod Canal is open, and the ships are running through that, they also work in the name "Cape Cod Canal Route" in their advertising (p. 574, l. 10).

ROBBINS CONTEMPLATED THE REMOVAL OF THE HARVARD AND YALE FROM THE BEGINNING.

Mr. McGovern shows in his testimony that as early as January, 1910, three months before the control of the defendant company had passed to Robbins, he and Robbins were discussing converting the freight ships into passenger ships. McGovern was then in negotiation with Robbins about this matter, and under date of January 19, 1910, wrote him a letter which appears as Exhibit C. 29 (p. 636), in which he said (p. 636, l. 30): "From what I learn here as to the other matters, I think it would be advisable to show some earnestness in the matter of having the other two vessels changed to passenger ships."

He wrote another letter on the same day to Mr. Robbins, in which he discussed in great detail the traffic conditions on the Pacific, the cost of operation, extent of freight and passenger business, all as bearing on the operation of the Harvard and Yale on the Pacific Coast (see Exhibit C. 30, pp. 637-640). In discussing the traffic between San Francisco and San Pedro, he says that the total passenger business by rail and water between those two cities would average 925 passengers each way per day, and writes (p. 638, l. 32): "In our estimates for the business of the S. S. Yale and Harvard we figured on 400 passengers each way four times per

week, which we considered conservative for the following reasons." He then details the traffic conditions to substantiate his estimate. Robbins acknowledged receipt of these letters under date of January 20, 1910, and said, very truthfully no doubt, that he had read them with very great interest (p. 641, l. 35). Under date of April 2, 1910, he wrote Mr. McGovern, seeking an appointment with him (p. 633, l. 16), and at the conference which followed they again discussed the Harvard and Yale (p. 643, l. 25). Before that, however, and on March 19th, the New Haven Railroad had begun the conversion of the two freight steamers into passenger ships.

The Vice-Chancellor, commenting on the transfer of the Harvard and Yale to the Pacific Coast, said (p. 2153, l. 27):

> "This action was within the contemplation of Robbins from the beginning, and he never would have gone into the deal if he had not contemplated the removal of the Harvard and Yale from the Atlantic coast, and the disposition of the freight steamers and other property to corporations controlled by himself or by the railroad. In other words, the suspension of the business of the Metropolitan Steamship Company of New Jersey."

This finding of the Court is predicated absolutely on the facts.

The New Haven Railroad spent $1,300,000 each on the original construction and conversion of the two freight ships, which it built to compete with or eliminate the Harvard and Yale, and it spent another $1,500,000 on acquiring the control of the property of the Metropolitan Steamship Company to bring about this elimination, or a total of $4,100,000 at least.

In the summer of 1910, while the Harvard and Yale were being operated by Robbins' com-

pany, the Maine No. 2, and the two freight steamers were being converted by the railroad, Robbins further perfected his arrangements for the transfer of the Harvard and Yale. On July 21, 1910, he again wrote McGovern, seeking an appointment (p. 652, l. 10). Thereafter they met at Robbins' office in the Grand Central, which was followed by a long letter from McGovern to Robbins, in which he said, among other things (p. 654, l. 10):

> I am writing to Capt. Goodall today on the subject matter of our conversation on Thursday last putting before him a tentative proposition to organize a company to operate the S. S. Yale and Harvard on the Pacific coast under a lease for two years with an option to purchase on or before the termination of the lease.

This tentative agreement subsequently resulted into a five-year lease with a company created for the purpose, namely, the defendant Pacific Navigation Company.

Captain Goodall testified that he was sent for by Mr. McGovern during the summer of 1910, and that he came East for the purpose of participating in the negotiations. About this same time Mr. Nicholson appears on the scene, when Mr. Robbins introduced him to Mr. McGovern as the person in charge of the ships, and said he could take the matter up with him (p. 644, ll. 30-40).

At the time Nicholson was brought into the matter the details had been definitely arranged between McGovern, Goodall and Robbins. His testimony is (p. 658, l. 35):

> Q To what stage had the negotiations between you and Mr. Robbins progressed with reference to the transfer of the Harvard and Yale to the Pacific coast at the time he introduced you to Mr. Nicholson?

A We had discussed it and he had advised me in an advisory capacity about what might be done, and so on, and he discussed it with Captain Goodall. Up to that point it had been, you might say, definitely arranged.

Mr. Nicholson followed the matter up by preparing the lease, or operating agreement between the defendant company and the proposed company which was afterwards created as the Pacific Navigation Company.

DESTINATION OF THE FREIGHT BOATS AND THE UNION WHARF.

It is interesting to trace the destination of the freight boats and the wharf which were acquired by Robbins in March of 1910. As already appears, the freight boats were transferred to Robbins' company, the Metropolitan of Maine No. 2, immediately upon their acquisition by Robbins. They remained in the possession of that company until they were sold to the Eastern Steamship Corporation. The Eastern Steamship Corporation was a company created in January, 1912, to take over the steamship line formerly operated by Eastern Steamship Company, the Metropolitan of Maine No. 2, and the Maine Steamship Company. The Eastern Steamship Company had been financed by Galen L. Stone. The Metropolitan of Maine No. 2 was Mr. Robbins' company, and the Maine Steamship Company was a subsidiary of the New Haven Railroad, of which, as Mr. Mellen said, the New Haven owned "every stick, stone, boat and everything else" (p. 1064, l. 35). In the negotiations which took place Mr. Stone represented the financial interests of the purchasers, Eastern Steamship Corporation, and

Mr. Robbins represented the interests of the Metropolitan of Maine No. 2 and the Maine Steamship Company. See testimony of Mr. Austin as follows (p. 1038, l. 36):

> Q In the negotiations which resulted in the Eastern Steamship Corporation, taking over these properties, who negotiated the financial part of it? A Mr. Stone and Mr. Robbins.
>
> Q Mr. E. D. Robbins? A Yes.
>
> Q That is Mr. Galen L. Stone? A Yes.
>
> Q What is his firm? A Hayden, Stone & Co., bankers.
>
> Q When you say "negotiated the financial part of it," what do you mean by that?
>
> *Mr. Faulks.* You said that.
>
> A They decided how many securities we should give them for those properties.
>
> Q And in what capacity did Mr. Robbins figure in the negotiations? A He represented the Metropolitan and the Maine.
>
> Q The Metropolitan of Maine No. 2 and the Maine Steamship Company? A Yes.
>
> Q He was there representing those two companies? A Yes.
>
> Q Where did Mr. Stone come in? A Mr. Stone was largely interested in the Eastern Steamship Corporation and largely interested in other steamship corporations.

Mr. Stone was later a director of the New Haven (Mellen, p. 1639, l. 15; Stone, p. 1118, ll. 35-40). Mr. Mellen was perfectly familiar with the transaction by which the property of the Maine Steamship Company was transferred to the Eastern Steamship Corporation, although he disclaimed knowledge of the transfer of the property of the Maine No. 2 (Mellen, p. 1633, l. 30, to p. 1637, l. 25). In that transaction Mr. Mellen delegated Mr. Robbins to represent the New Haven interests (Mellen, p. 1654, l. 19).

Remember that Mr. Austin was nominally the president of Maine No. 2, yet he assumed no re-

sponsibility whatever for the protection of its interests in the negotiations. He was a pure dummy of Mr. Robbins, as president, and only a nominal officer.

On the transfer, the Eastern Steamship Corporation paid the Maine No. 2 for the freight boats, lighters and floats which had formerly belonged to the defendant company 8,500 shares of common stock and $1,700,000 of bonds (Austin, p. 1034, ll. 1-10). The par value of the stock was originally $50 per share, but afterwards reduced to $25 (p. 1034, l. 25, and p. 1035, l. 22). See also Exhibit C. 99 (p. 1880), which was the formal agreement for the transfer. The total issue of bonds, of which the $1,700,000 were a part, was $8,500,000 (p. 1034, l. 30).

The next month some of the bonds of this same issue sold for 97½ (p. 1670, l. 19).

It will be remembered that the Union Wharf was purchased by Robbins for $350,000 of bonds, which he paid for with money of the defendant company. This was in March of 1910, and by release and deed executed by the defendant company and the American Trust Company, this wharf was conveyed to the Metropolitan of Maine No. 2, Robbins' company, on June 17, 1910. (See Exhibit C. 59, pp. 1839-1844.) The consideration of the release was the turning in of the $350,000 of bonds (Bowen, p. 1915, l. 20).

Although the Metropolitan of Maine No. 2, started out as the owner of the Union Wharf, it was subsequently transferred to the Maine Steamship Company, which was admitted by Mr. Mellen to be owned entirely by the New Haven Railroad (Mellen, p. 1637, l. 20). When Mr. Austin and Mr. Stone on the one side, and Mr. Robbins on the other, were negotiating for a sale of the property of the Metropolitan No. 2,

and the Maine Steamship Company, to Eastern Steamship Corporation, included in the property belonging to the Maine Steamship Company was the Union Wharf (Austin, p. 1012, ll. 10-36).

Mr. Stone at the request of Robbins had become a director of his Metropolitan Steamship Company of Maine No. 2 (Stone, p. 1109, l. 15 and l. 35). When, later, he negotiated on behalf of Eastern Steamship Corporation, he looked to Mr. Robbins as the person who could deliver the goods on behalf of both the Metropolitan of Maine No. 2, and the Maine Steamship Company (Stone, p. 1114, ll. 1-40). Although he was a director of the Maine No. 2 he had no knowledge as to when it acquired the Union Wharf, or whether it owned it at the time he became a director (Stone, p. 1117, ll. 20-40), nor did he know of the fact that the Metropolitan of Maine No. 2, had sold the Union Wharf to the Maine Steamship Company (Stone, p. 1118, ll. 1-15).

The total cash value placed on the combined properties of the Metropolitan of Maine No. 2, and the Maine Steamship Company was stated by Mr. Stone to have been $5,500,000 (p. 1137, l. 39). Of this, the value assigned to the four freight boats and the car floats, which had formerly belonged to the defendant company, was $1,300,000, or $1,400,000 (Stone, p. 1138, l. 3), and the balance of $4,100,000 or $4,200,000 was the value placed on the property of the Maine Steamship Company (Stone, p. 1138, l. 6).

As part of the purchase price of the assets of the Maine Steamship Company, the New Haven Railroad, through its New England Navigation Company, received 20,000 shares of common stock, out of a total of 67,500, and 15,000 shares of preferred stock, out of a total of 30,000 (p. 1106, ll. 10-40); also $2,500,000 par value of first mortgage bonds (Clark, p. 1660, l. 34).

These bonds which were acquired in January of 1912 were sold the next month, as appears from the meeting of the board of directors held on February 16, 1912, at the price of 97½ and interest (p. 1665, ll. 12-20; p. 1667, ll. 10-20).

The preferred stock had a par value of $100 per share (p. 1035, l. 17), and was sold in April of 1912, or four months after, at 97½ per share (p. 1670, l. 15).

The common stock was also sold at the same time at 42 (p. 1670, l. 17).

THE INDIA WHARF.

In addition to the freight boats, the Union Wharf and the Harvard and Yale, the defendant company also had a lease of the India Wharf in Boston. This was one of the items of property which Robbins was careful to purchase when he closed the matter up on March 5th, 1910. See Exhibit C. 6 (p. 1753, l. 15).

After Robbins had stripped the defendant company of its freight boats and the Union Wharf, and had banished the Harvard and Yale to the Pacific Coast, the defendant company still had this lease on the India Wharf. Thereupon the dummy directors of the company voted to assign the lease, which so far as the record shows was without any consideration.

In May, 1911, a formal request was made by the defendant company to the American Trust Company, as trustee, to release the lien of the mortgage from this interest in the India Wharf. See Exhibit C. 61 (p. 1845, l. 30). This request had been preceeded by a formal resolution of the directors (see Exhibit C. 62, p. 1847).

It is rather significant that this resolution does not state to whom the India Wharf is to

be transferred, although it says that the object of the proceedings is to enable the defendant company to transfer it free of any trust or lien created by the mortgage (p. 1848, l. 10).

Under date of June 9, 1911, a formal release was executed by the American Trust Co. (see Exhibit C. 64, p. 1849, l. 30, &c.).

At a meeting of the stockholders, consisting only of the Robbins interests, held on November 17, 1911, the president solemnly reported "that the company found itself during the year with a lease on its hands for India Wharf in Boston, for which wharf it had no possible use whatever. Fearing that the company might become liable to pay rent for this wharf, unless some satisfactory permanent arrangement could be made with regard to it, the directors authorized the president to investigate and protect the company from having to pay rent for this wharf. In pursuance of this vote negotiations were entered into which resulted in the assignment of the lease of India Wharf after a release of this India Wharf lease from the lien of the first mortgage."

In other words, Robbins, as the sole stockholder, through Chase, ratified the action of Robbins, through his dummy directors. It is no wonder that the company had no use for the wharf inasmuch as Robbins had stripped it of all its tangible property by that time.

DESTINATION OF THE STOCK AND BONDS ACQUIRED BY THE METROPOLITAN OF MAINE NO. 2 ON THE SALE.

It is interesting to note what became of the stock and bonds acquired by the Metropolitan of Maine No. 2 for the sale of the freight ships formerly belonging to the defendant.

The ownership of this stock was carefully concealed. Since Mr. Robbins concededly owned the Maine No. 2, he consequently owned the stock which was transferred to it on the sale of these assets. He was afraid to hold it in his own name, or in the name of the New Haven Railroad, and therefore, through the agency of his friend, ex-Governor Hill, of Maine, caused a corporation to be incorporated, known as the Eastern Securities Company. He went through the motions of sending to Governor Hill a check for $50,000 to pay for the 500 shares of capital stock, and with this check Governor Hill bought the stock of the Eastern Securities Company (Bassett, pp. 1157, 1159, 1163).

The Eastern Securities Company having thus obtained $50,000 in its treasury, purchased from Governor Hill the 8,500 shares of stock of the Eastern Steamship Corporation, which had previously been turned over in part payment of the freight boats of the defendant company, and which stock Robbins had turned over to Hill, so as to enable him to make the transfer (Bassett, p. 1164). Thus the 8,500 shares of stock came into the possession of the Eastern Securities Company. After the matter was all closed up Governor Hill sent back to Mr. Robbins the $50,000 which he had sent him to make the record complete, after deducting the expenses (Bassett, p. 1179, l. 30, and p. 1181, and pp. 1185-1187). Governor Hill reported fully to Mr. Robbins on the matter under date of January 16, 1912 (p. 1188, l. 25 to p. 1189, l. 40). See also the testimony of Miss Stafford, Governor Hill's stenographer (p. 1214, &c.), and George C. Libby, treasurer of the State Trust Company, which was the depository of the Eastern Securities Company in connection with the $50,000 check (p. 1229).

On Governor Hill's death this certificate of 8,500 shares of the Eastern Steamship Corporation was found in his locked box, endorsed in blank (Bassett, p. 1194). The stock was enclosed in an envelope, upon which was endorsed in Governor Hill's handwriting (p. 1195, l. 5): "8500 shrs. of Eastern Steamship Corporation, the property of Eastern Securities Company, John F. Hill, Treas. Jan. 13, 1912" (p. 1196). It also appeared from the testimony of Mr. Bassett, who was attorney of Governor Hill's executor, that no claim whatever was made by Governor Hill's estate for these shares of stock, but after his death they had them transferred on the books of the Eastern Steamship Corporation, in the name of Eastern Securities Company (Bassett, p. 1201).

Another interesting thing is the disposition which was made of the stock of the Eastern Steamship Corporation which was paid to the New Haven Railroad in consideration of the property of the Maine Steamship Company, which included the Union Wharf. It appeared from the minutes of the New Haven Railroad that the Attorney-General of the United States had in October, 1913, threatened to sue the New Haven Railroad under the Sherman Act, and that a committee of the board of directors, along with counsel, effected a compromise with him, by which the matter was adjusted to the satisfaction of the government. Among the terms imposed, as stated in the memorandum to the press, which was set forth in the minutes of the New Haven Railroad, was the following (p. 1689, l. 39):

> "Memorandum of the situation in respect of the New York, New Haven & Hartford Railroad Company. The attorney-general has indicated to the representatives of the

> New York, New Haven & Hartford Railroad Company the arrangements which he thinks would result in bringing the affairs of that company into harmony with law. The representatives of the railroad are willing to accept the requirements indicated and to endeavor to put them into effect without delay, and if approved by the stockholders, in a meeting to be called at once." The indicated arrangements stated in general terms follow. I skip now to four. "The minority stock in the Eastern Steamship Corporation held by the New Haven Railroad shall be sold within three years from July 1, 1914, and in the meantime shall be deprived of voting power." Other provisions follow.

Very evidently the government felt that there was a close connection between the suppression of competition by the New Haven Railroad, and the operation of the freight boats, and the use of the Union Wharf, among other property, by the Eastern Steamship Corporation.

It is interesting to note in passing what became of the 14,373 shares of stock of the defendant company which Robbins acquired from McKinnon. Apparently neither he nor any of his dummies were willing to hold it in their own name. Accordingly Chase, through Nicholson (p. 426, l. 18) as they both admit, caused a corporation under the laws of New York to be incorporated, called the Chilmark Company, and this company went through the motions of exchanging its capital stock for the 14,373 shares of stock of the defendant company, and the Chilmark Company now appears of record on the books of the defendant company as the owner of those shares of stock. This Chilmark Company was purely a dummy creation. See also the testimony of Linz (p. 887), and Kaseman (p. 895), two of the dum-

mies who were used in connection with the incorporation of the Chilmark Company.

Chase claims to own the Chilmark Company and to hold the certificate for its stock. He has never been willing to put that certificate in his own name, however, and it still stands of record in the name of the dummy incorporators.

The real fact to be kept in mind, however, is that Chase, in whatever guise he may appear, has no financial interest in the stock of the defendant company, but it was bought and paid for with money which the New Haven Railroad provided in March of 1910.

Legal Conclusions Resulting from the Facts.

The state of the facts results in the following as matters of law:

FIRST: THE MISMANAGEMENT OF THE COMPANY BROUGHT ABOUT A VIOLATION OF THE SHERMAN LAW, WHICH WAS ULTRA VIRES, AND IN ITSELF ENTITLES THE COMPLAINANTS TO THE APPOINTMENT OF A RECEIVER.

There is no effort in this bill to enforce the provisions of the Sherman Law, and of course, no such enforcement could be made in a suit in equity. The actions of the directors, however, in being party to a course of procedure which is in violation of the Sherman Act, stamps them as having acted fraudulently and in violation of their duties as directors.

If they have in fact permitted the company to have violated the Sherman Act by conspiring or combining with the railroad company to eliminate competition, that fact is itself evidence of their mismanagement, and a ground for their removal.

The facts set up in the bill and proved in the case clearly demonstrate a situation which violates the Sherman Act.

See *Darius Coal Trans. Co.* v. *White Star Line,* 186 Fed. 63 (C. C. A.), which was a case dealing with a lease of a steamship in order to eliminate competition.

Also *Chesapeake, &c. Fuel Co.* v. *United States,* 115 Fed. 610 (C. C. A.).

In *Northern Securities Co.* v. *United States,* 193 U. S. 197, Justice Harlan said, at page 331, after citing cases:

> "That every combination or conspiracy which would extinguish competition between otherwise competing railroads engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the act."

See also *Arkansas Brokerage Co.* v. *Dunn & Powell;* 173 Fed. 899 (C. C. A.).

The defendants' brief, at page 19, says, "Even if proved, a violation of the Sherman Law by the railroad company in 1910, had no bearing in February, 1917, on the legal propriety" on the appointment of a receiver.

Such a proved violation has every bearing on the appointment of a receiver under the facts of this case. The record shows that beginning in March, 1910, and even before, the company was a one-man corporation, dominated by Robbins. The directors and officers both before and after that date, were his dummies, and did his bidding. At his behest the company violated the Sherman Law and became a party to the suppression of competition. Such an act in itself was *ultra vires.*

It is so settled in this State in *Elkins* v. *Camden & Atlantic R. Co.,* 36 N. J. Eq. 5.

Moreover under the facts here this has been a continuing offense, because Robbins, through his one-man management, aided by his dummies, as co-conspirators, has seen to it that the elimination of the competition has continued, first, through the making of the five-year lease with the Pacific Navigation Company, and at the expiration of that by the making of another five year lease with the Pacific Alaska Navigation Company, besides making it permanently impossible for the freight boats to ever operate again by transferring their title and ownership to other companies.

The Robbins management, therefore, is successfully continuing its efforts to eliminate the competition. It, therefore, comes directly within the ruling of the United States Supreme Court in *U. S.* v. *Kissell,* 218 U. S. 601, where Justice Holmes said (p. 607):

> "When the plot contemplates bringing to pass a continuous result that will not continue without the continuous co-operation of the conspirators to keep it up, and there is such continuous co-operation, it is a perversion of natural thought and of natural language to call such continuous co-operation a cinematographic series of distinct conspiracies, rather than to call it a single one. Take the present case. A conspiracy to restrain or monopolize trade by improperly excluding a competitor from business contemplates that the conspirators will remain in business and will continue their combined efforts to drive the competitor out until they succeed. If they do continue such efforts in pursuance of the plan the conspiracy continues up to the time of abandonment or success. A conspiracy in restraint of trade is different from and more than

a contract in restraint of trade. A conspiracy is constituted by an agreement, it is true, but it is the result of the agreement, rather than the agreement itself, just as a partnership, although constituted by a contract, is not the contract but is a result of it. The contract is instantaneous, the partnership may endure as one and the same partnership for years. A conspiracy is a partnership in criminal purposes. That as such it may have continuation in time is shown by the rule that an overt act of one partner may be the act of all without any new agreement specifically directed to that act."

See *U. S.* v. *Swift,* 186 Fed. 1002, pp. 1012-1015.

The facts here as detailed show that the motive of Robbins and his confederates was to eliminate the competition of the Harvard and Yale. A violation of the Sherman Law, therefore, was a necessary result of their undertaking. The question now is not the enforcement of the Sherman Law, but the effect of their actions as bearing on their motives, and resulting in the directors of the company doing an *ultra vires* act, which *ultra vires* act was ratified by the same conspirators through the vote of Chase as the dominant stockholder, acting for Robbins.

SECOND: THE DIVERSION OF THE ASSETS WAS CONTRARY TO THE UNDERSTANDING WHICH THE PARTIES IN INTEREST HAD WHEN THEY PUT THEIR MONEY IN THE ORIGINAL COMPANY, AND IN THE REORGANIZED DEFENDANT COMPANY, UNDER THE PRINCIPLE OF *KEAN* v. *JOHNSON,* 9 N. J. Eq. 401.

The charter of the company is in the ordinary form giving it authority to conduct its business

anywhere (Schedule A., page 20, etc.). There is no doubt, however, that the immediate object of the incorporation of the defendant was to continue the operation of the steamships, both freight and passenger, previously operated by the original Metropolitan Steamship Company, and to secure the benefit of the valuable good will which went with them for the carriage of both freight and passengers between New York and Boston.

The contract between the company and the stockholders, as set forth in the charter, was with reference to that very situation.

The whole idea of the defendant company was that it was a reorganization of the Metropolitan Steamship Company of Maine No. 1. That company had operated the freight boats and the Harvard and Yale between Boston and New York, and had used in connection with that business the Union Wharf and the terminal facilities in New York. The stockholders and creditors of that company put their money into it with reference to that situation, and they expected that they would continue their investment in the new company in the same business.

Furthermore, there is nothing in the charter of the company indicating that it had any authority or right, much less the expectation of denuding itself of the larger part of its assets, namely, its freight boats and wharves, and leasing its remaining assets, namely, the Harvard and Yale, to an operating company, and thus putting itself entirely out of business, and leaving only the franchise of the company and the right to receive the rent from the operation of the Harvard and Yale.

This is further demonstrated by a reading of the reorganization agreement, Exhibit C. 1 (p. 1730).

This agreement recited the obligations of the original Metropolitan Steamship Company, and provided for the issuance of securities by the new company to be organized to take up the original securities (p. 1731, l. 20). It was also provided that in case of a purchase at the receivers' sale by the reorganization managers, the property purchased, and all rights therein, should be conveyed and assigned to two persons named respectively by the reorganization managers and the committee, "to be held in trust by such persons until the conveyance and transfer thereof to the new company" (p. 1733, l. 25). The plan contemplated the forming of a new company with practically the same name, the original suggestion being that it should be known as "Metropolitan Steamship Lines" (p. 1737, l. 36). The plan further contemplated the purchase of all the properties of the original Metropolitan Steamship Company, at the foreclosure sale, and that they be conveyed to the new company free and clear of all liens excepting the existing mortgage on the Union Wharf in Boston (p. 1738, l. 23).

The thought which pervades the entire reorganization agreement is that the new reorganized company should continue with the same ships and wharves the business which had previously been carried on by the original company, and that the creditors should exchange their securities from the one to the other.

The Court will also remember that when the sale was finally closed out between McKinnon and Robbins, that McKinnon stipulated (very evidently as a sop to the remaining stockholders and creditors, when they should learn and inquire about it) and Robbins agreed (perfidiously, as now appears) that the Harvard and Yale at least

should continue to be operated between Boston and New York.

The parties to this suit are not only stockholders, but also creditors, holders of unsecured ten year notes. These ten year note holders have almost the status of stockholders. The original plan contemplated an issue of $3,000,000 of stock, which had been the amount of stock of the original company. Later the plan was changed to issue $1,500,000 of stock and $1,500,000 of unsecured non-interest bearing ten year notes. The complainants Noyes and Newbert are among these ten year note holders, and the record shows that they are but representative of hundreds of thousands of other ten year note holders similarly situated, who paid their money into the defendant company with the expectation that its business between New York and Boston would be continued.

In the defendants' brief at p. 37 in his argument counsel for the defendants practically puts these note holders on the same plane as stockholders.

That line of cases of which *Kean* v. *Johnson*, 9 N. J. Eq. 401, is the leader, is all to the effect, as stated in the second syllabus to that case, that "a majority of stockholders in a prosperous corporation cannot at their own mere caprice sell out the whole source of their emoluments, and invest their capital in other enterprises, when the minority desire the prosecution of the business in which they had engaged. The contract is that their joint funds shall under the care of specified persons, generally called directors, be employed, and that for certain specified purposes."

For cases illustrating and amplifying the rule there laid down, see

Zabriskie v. *R. R. Co.,* 18 N. J. Eq. 178, p. 184.

Black v. *D. & R. Canal Co.,* 24 N. J. Eq. 455, pp. 463-464.

Elkins v. *C. & A. R. R. Co.,* 36 N J. Eq. 5, p. 14.

Everitt v. *First Presbyterian Church,* 53 N. J. Eq. 500, p. 511.

Einstein v. *Raritan Woolen Mills,* 74 N. J. Eq. 624, p. 629.

In *Black* v. *D. & R. Canal Co., supra,* Justice Van Syckel in the Court of Appeals, quoted and approved the language of the Court in *Kean* v. *Johnson* (p. 464), which said:

> "What the majority determine within the scope of this mutual contract they each agree to abide by, but there their mutual contract ends, and no majority, however large, has a right to divert one cent of the joint capital to any purpose not consistent with and growing out of this original fundametal joint intention." Citing cases.

The fact that the defendant company by its charter has a right to operate steamships anywhere in the world, does not alter the situation. This authority in the charter does not justify the directors in improperly divesting itself of its freight boats and wharves, and diverting the two steamships to the Pacific Coast. The language of Justice Van Syckel in the Black case, at p. 468, is pertinent, where the Court said:

> "The proposition now considered is, whether, after shareholders have entered into a contract among themselves under legislative sanction, and expended their money in the execution of the plan mutually agreed upon, the scheme can be radically changed by the majority, by virtue of legis-

> lative enactment, and a dissentient stockholder compelled to engage in a new and totally different undertaking, without impairing the obligation of his contract with his associates and with the state. That this cannot be done, is as well supported by every consideration of justice and right, as it is firmly embedded in judicial decision."

We also call the attention of the Court to the language of the Chancellor in *Zabriskie* v. *R. R. Co.*, 18 N. J. Eq. at p. 183.

In the *Elkins case, supra,* Chancellor Runyon sums up the various grounds upon which equity will interfere with the actions of boards of directors. He points out that the fact that the majority of the stockholders approve a course which is illegal, could not justify the directors in entering into the arrangement. (9 Stew. at pp. 15 and 16.)

For the directors in this case to have denuded the company of all its assets, and to have made impossible the doing of those very things for which the company was organized, must constitute a violation of the contract between the stockholders and the company, and exemplifies a situation which was clearly *ultra vires.*

THIRD: THE FRAUDULENT CHARACTER OF THE TRANSACTION IS SHOWN IN THE UNJUSTIFIABLE PROFIT WHICH ROBBINS, AS THE DOMINATING INDIVIDUAL IN THE COMPANY, REAPED AT THE EXPENSE OF HIS FELLOW CREDITORS AND THE STOCKHOLDERS.

The New Haven paid $1,500,000 for the delivery to Robbins of 14,373 shares of stock, out of a total of 15,000, which carried with it the title to all the physical property of the company; for

$1,000,000 of first mortgage bonds; for $500,000 of two year notes—the entire issue; for $375,000 of demand notes—the entire issue—and for $683,-000 ten year notes.

With the $1,000,000 of bonds, he secured the release from the lien of the mortgage of the Union Wharf, and all the freight boats and floating equipment, except the Yale and Harvard. He immediately transferred the freight boats to his Maine Company No. 2, for $1,500,000. He says in his brief (p. 32) for $3,000,000. This same property had been appraised as worth $650,000. When these same ships were transferred to the Eastern Steamship Corporation, they were put in, according to the testimony of Mr. Stone, who paid for them, at a valuation of $1,300,000 or $1,400,000, and the actual payment for them was 8,500 shares of stock at the par value of $25 each, and $1,700,000 of first mortgage bonds of the Eastern Steamship Corporation. Bonds of this issue sold the next month at 97½.

By the use of the balance of the same bonds he secured the release of the lien of the mortgage on the Union Wharf. He sold the equity in this wharf, over and above the $500,000 mortgage, to the Maine Steamship Company for $400,-000, as appears from the minutes of the Maine Steamship Company, testified to by Mr. Clark (p. 1662, l. 35).

How much it was valued at on the sale of the assets of the Maine Steamship Company to the Eastern Steamship Corporation, does not appear.

In the defendants' brief (p. 32, par. 2), it is stated that the money paid for the transfer of the freight boats and the Union Wharf, was $3,-000,000. If this is so, then the profit which he obtained is, by his own admission, even larger.

The record shows that the defendant company was controlled by Robbins, and that by his assuming control of the corporation and dictating the action of the directors, he became a trustee for the minority stockholders and creditors.

This principle, under a proper state of facts, is fully recognized in *Robotham* v. *Prudential Insurance Company,* 64 N. J. Eq. 673, pp. 689-690. In that case it is said (p. 689):

> "That the fiduciary relation arises when the majority stockholder assumes control of the corporation and dictates the action of the directors."

and again it is said on p. 690 that such liability may arise

> "if the majority stockholder has made the derelict trustees his agents and dictated their conduct and thus caused a breach of fiduciary duty, of which the minority stockholders complain."

The cases cited by the defendant in his brief under point 6 (pp. 27 and 28), are clearly distinguishable under the facts here. In fact the principle for which we contend is recognized in *Colgate* v. *U. S. Leather Company,* 73 N. J. Eq. 77, cited by the defendant (p. 28) of its brief, where the Court said,

> "This right of the majority (statutory or other) either to originally direct or to affirm contracts or other proceedings in which the directors, or the majority stockholders are interested, is not, however, absolute, but is subject to the necessary qualification that the majority although they may deal with the assets of the company, cannot so deal with them as to divide these assets, more or less, between themselves to the exclusion of the minority. Lillard *v.* Oil Paint and Drug Co., *supra;* Menier *v.* Hooper's Telegraph Works, 9 Ch. App., 353 (1874)."

See also *2 Cook on Corporations,* section 660, p. 1946.

The essence of the situation is this—McKinnon through his Assets Realization Company and through his position as liquidating agent of the Bank of North America had stock, bonds and notes of the defendant company which he wanted to sell. Robbins was ready to buy these securities on a certain condition. This condition was that Metropolitan Steamship Co. of N. J., the defendant, would make an agreement in advance of the sale of the securities by McKinnon to Robbins to sell the freight boats and the wharf to Robbins' dummies, and also would make an agreement to cancel the lien of the mortgage on those properties in advance of the sale. The record shows that this was carried out and that by resolution passed February 16th, 1910, the directors of the defendant company authorized the sale of the freight boats to Wing and Russell, Robbins' dummies. The board of directors at that time was composed of three men, one of whom was Mr. Shaw, President, and Mr. McKinnon, Vice-President, respectively, of the Assets Realization Company; and one Wire, an employee of McKinnon, who was a resident of New Jersey. The board of directors, therefore, was made up of individuals who were most interested in making an advantageous sale of the stock and securities which the Assets Realization Company owned.. An arrangement, similar to that which had been made as to the freight boats, was also made as to the Union Wharf at the same time, although that was not actually agreed to be sold to Canfield until March 3, 1910.

Remember that the transfer of the securities from McKinnon and his interests to Nicholson, Robbins' purchaser, was not made until March 5,

1910, under a written agreement made March 4, 1910. It appears that Robbins required McKinnon to deliver the goods before he would even permit his dummy Nicholson to make a written agreement with him, and it appears further that the condition of entering into this agreement of March 4, 1910, (Exhibit C. 6, p. 1750) for the purchase of his securities was that the freight boats and the wharf should first be sold free and clear of the lien of the mortgage. In all this transaction Robbins compelled the directors to violate their duty to the other creditors and stockholders of the defendant company in order to make a sale to him.

It is claimed in the brief that the securities which Robbins purchased from McKinnon were purchased for $3,000,000 (Brief, p. 25). Chase admitted, however, that there was only $1,500,000 actual cash used in the transaction (p. 232, l. 27). What was done was this: The New England Securities Company which Chase says was Robbins' company (p. 224, l. 9), had a capital stock of $1,500,000 which Chase said was paid in cash (p. 222, l. 14). In order to pay for this stock, one of the incorporators borrowed temporarily from a bank on March 5th, 1910, $1,500,000 (p. 222, l. 16). This same money was paid back to the same bank the same day (p. 222, l. 30). This theoretically put $1,500,000 in the New England Securities Company. On the same day the New England Securities Company borrowed from the Billard Company $1,500,000 and put up as collateral the stock of the Metropolitan Steamship Company of Maine No. 2 (Chase, p. 228, ll. 37 to 40). It was the same $1,500,000 which the Billard Company had borrowed from the Farmers Loan & Trust Company, and which was the only actual money used in the transaction.

These manipulations, however, gave the New England Securities Company a nominal capital of $3,000,000. It is important to remember in this transaction that the collateral which it put up for $1,500,000 was the stock of the Metropolitan Steamship Company of Maine No. 2.

The only property which the Metropolitan Steamship Company of Maine No. 2 had, however, were the Union Wharf and freight boats which belonged to the defendant company. That was worked out according to Chase as follows (p. 222, l. 14):

> "Mr. Canfield sold to the Metropolitan Steamship Company of Maine known as No. 2 in this case, Union Wharf and the freight boats which were formerly owned by the Metropolitan Steamship Company of New Jersey and he obtained from them on that sale sufficient funds to use in making this purchase from Nicholson."

In order to understand that transaction, the Court must remember that Nicholson had agreed to buy the stock and securities of the defendant company from McKinnon (Exhibit C. 6, p. 1750). That agreement was dated March 4th, 1910. On the next day an agreement was entered into between Nicholson and Canfield by which Nicholson sold to Canfield everything which he had bought from McKinnon except the stock of the defendant company which went to Chase for Robbins (Exhibit C. 195, p. 1965). This put Canfield in a position, through the arrangement which had previously been made by Robbins, to cancel the lien of the mortgage on the freight boats and wharf and thus secure possession o those properties.

In anticipation of this Canfield sold to Metropolitan Steamship Company of Maine No. 2 the freight boats and the Union Wharf before he had

them (p. 221, l. 20). This sale gave whatever value there was to the stock of the Maine No. 2 so that stock depended for its value on the assets of the defendant company which was then transferred to it.

The defendant claims in its brief (p. 25 and p. 32) that the transaction represented a value of $3,000,000 which showed Mr. Robbins' estimate of the value of the freight boats and the Union Wharf.

Of this $3,000,000, $1,500,000 after going around in a circle went back to the bank from which it was borrowed the same day. The other $1,500,000 which was borrowed by the Billard Company was paid out by cashiers' checks to McKinnon and his interests. If there was any value, therefore, in the stock of the Metropolitan of Maine No. 2 that value rested upon the property of the freight boats and wharf of the defendant company, which had been transferred to it without any real consideration.

Another feature of this case, as bearing on this point, is by the confession of Chase the defendant company was in 1910 insolvent (see his testimony, p. 486, l. 22, &c.). He said (p. 248, l. 18): "The company was at that time undoubtedly insolvent."

Mr. Robbins by virtue of his deal with McKinnon had become possessed of $500,000 two year notes. Those notes by their terms were not due until November, 1911. Nevertheless, Robbins, through his control of the company, caused it to make a second mortgage to one Greening, as trustee, for $750,000 of 6 per cent. bonds. As soon as that was done he exchanged his $500,000 of two-year notes which were unsecured, and not yet due, for an equal amount

of second mortgage bonds, which were secured by a mortgage on the Harvard and Yale.

If, as Chase admits, the company was then insolvent, he preferred himself to the detriment of every other unsecured creditor, for if the company was then insolvent, and then unable to pay, it would have put the ten-year notes and the two-year notes on a parity, each being unsecured, and the two-year notes under those circumstances had no greater rights, and were entitled to no greater preference than the ten-year notes, or any other unsecured debts of the company.

Furthermore Robbins brought into existence and so manipulated the Pacific Company as to make further profits out of the defendant company.

The Pacific Company was admittedly brought into existence to finance the sending of the Harvard and Yale to the Pacific Coast. Mr. Chase in his testimony (pp. 245 to 253, and pp. 267-271), gives an explanation of the origin and manipulations of this Pacific Company. It had a nominal capital of $1,100,000. Of this, $850,000, representing the common stock, was without consideration, and this was supposed to have been paid for by having the ten-year notes and other securities of Mr. Robbins passed through the Pacific Company's books (p. 245, l. 20; p. 246, l. 15; p. 251, l. 30, to p. 252, l. 8). As Chase expressed it (p. 250, l. 34): "The other $850,000 was simply passed around in those transactions so that the stock might be fully paid, and there might be no question of subsequent liability on the capital stock." This $850,000 was represented by common stock.

$250,000 was represented by preferred stock, which was paid in cash. Of this cash, $150,000

was paid in by the Pacific Navigation Company, and $100,000 was paid in by Mr. Robbins (Chase, p. 250, l. 37). The preferred stock was divided between the Pacific Navigation Company and Robbins in that same proportion. Of the common stock the Pacific Navigation Company received $250,000 and Robbins received the balance (Chase, p. 251, ll. 1-11). The balance amounted to $600,000 (p. 251, l. 14). That left Robbins in control of the Pacific Company.

The result of these transactions was to place in the treasury of the Pacific Company $250,000, representing the payment on its preferred stock. This money was taken by the Pacific Company and paid to the defendant company for the remaining $250,000 of second mortgage bonds which were left over after Robbins had taken $500,000 of these second mortgage bonds in exchange for his unsecured notes. With this $250,000 of cash, the defendant company financed the transfer of the Harvard and Yale to the Pacific Coast.

It will be remembered that the operation of the Harvard and Yale on the Pacific Coast was conducted by the defendant Pacific Navigation Company, under the operating agreement, Exhibit C. 34 (p. 1777). This agreement required the Pacific Navigation Company to pay to the defendant company a specified sum per month. In order to secure the benefit of this income of the two ships for himself, Robbins caused the defendant company and the Pacific Navigation Company to enter into a sinking fund agreement with Mr. Greening, who was the trustee named in the second mortgage, by which the income from the ships was paid to Greening. (Exhibit C. 189, p. 1948.)

The money thus earned was paid direct to Greening. Thereafter Greening disbursed the moneys solely on the order of Mr. Chase, and what Chase told him to pay he paid, and what he told him not to pay, he withheld. (See Greening's testimony, p. 196, l. 1, to p. 199, l. 20.)

That Robbins and Chase regarded this arrangement as devious, to say the least, is evident from a letter which Chase wrote Greening, which is marked Exhibit C. 190, and appears at page 193 of the record, where he said, with reference to these second mortgage bonds (l. 20):

> "I believe you understand that in case of inquiry of any sort or nature about these bonds, or the company, or your dealings, or your connection, you are to refer everybody simply to Mr. Nicholson, as treasurer of the company, and not to anyone else."

From the money earned by the Harvard and Yale and disbursed through this sinking fund, the $500,000 of second mortgage bonds which Robbins held, either directly or through the Pacific Company, were paid off, and the preferred stock of the Pacific Company was retired, and payments were made, in addition, upon the common stock, a part of which was retired (see Chase, p. 269, ll. 10-30). The preferred stock was retired either at par or 110 (p. 269, l. 35).

When this situation developed the Vice-Chancellor very properly, during the trial, and to protect the company from further looting, ordered that its officers and agents be restrained from making any further payments to either Robbins, Chase or the Pacific Company, or to the holders of any second mortgage bonds (p. 2172). This is one of the orders appealed from. The making of this order was a very proper exercise of the discretion of the Court under these cir-

cumstances as they developed in the evidence taken before him.

The order appealed from restraining the payment of the second mortgage bonds has practically the same status as this last mentioned order. The bonds were overdue by their terms, Robbins having carefully seen to it that the mortgage became due before the ten year notes became due. The origin of those second mortgage bonds was the fraudulent one, first, to prefer Robbins as a creditor, at the time the company was insolvent, to the extent of $500,000, and second, to finance the transfer of the Harvard and Yale to the Pacific Coast, and so bring about a complete elimination of those ships as competitors of the New Haven Railroad. The contention is made in the defendants' brief (Point 13, page 43) that this issue of bonds had been made in order to protect the company from threatened bankruptcy, but the "threatened bankruptcy" was a situation which had been created by Robbins and his dummies in order to make a plausible excuse for the doing of the very thing which they did do.

ROBBINS WAS A TRUSTEE FOR THE METROPOLITAN STEAMSHIP COMPANY OF NEW JERSEY BECAUSE IT WAS INSOLVENT AND ROBBINS COULD NOT PURCHASE ITS OUTSTANDING OBLIGATIONS AT A DISCOUNT AND COMPEL THE COMPANY TO PAY HIM THE FACE VALUE THEREOF.

It is obvious that the Metropolitan Steamship Company of New Jersey was insolvent at the time of the transactions complained of and is still insolvent. Its obligations are fully set out in Exhibit C. 6, page 1750. The reorganized company had no working capital (p. 717, lines 33 to

40; p. 718). The operation of the freight boats was carried on at a loss during the winter of 1909 and 1910 (p. 728, line 20). Mr. Chase's testimony shows that he and Robbins considered the Metropolitan Steamship Company of New Jersey as undoubtedly insolvent (p. 241; p. 247, line 25; pp. 248 to 252; 484, line 20; pp. 486 to 490). Mr. Austin's appraisal shows the value of the property of the company, and while we think this appraisal entirely too low, yet on a high appraisal the property would not have brought sufficient to pay its debts. The two notes due the Atlantic, Gulf & West Indies Company aggregating $60,000, have been past due four or five years and are still unpaid (p. 291). It was evident in 1910 that the $500,000 two year six per cent. notes could not be paid when they matured in November, 1911, and there is at present due and unpaid on the second mortgage bonds $286,000 and these bonds have been past due since October, 1915. The $1,427,000 ten year notes will mature in November, 1919, and it is clear that the company cannot pay these notes at maturity. We therefore think the company was undoubtedly insolvent in 1910 and is still insolvent under *Wright* v. *The American Finance Company,* 93 Atl. Rep. 862.

It is well settled that a director of a corporation cannot purchase the outstanding obligations of an insolvent corporation and collect from the corporation more than the amount paid for such claims. (*Bulkley* v. *Whitcomb,* 121 N. Y., 107; *Bonny* v. *Tilly,* 109 Cal., 346; *Higgins* v. *Lansing,* 154 Ills., 301, 386; *Cook on Corporations,* Section 660.)

In the case of *Bonny* v. *Tilly, supra,* it appears that the director purchased the claim involved shortly prior to the time that he became a director, but the court held that he was entitled to reimbursement only.

That a stockholder who controls a corporation is subject to the same duty as the Board of Directors toward the corporation and its stockholders, see *Robotham* v. *Prudential Insurance Co.,* 64 N. J. Eq. 673, 689; *Steinfeld* v. *Nielsen,* 100 Pac. 1094; *Wheeler* v. *Abilene National Bank,* 159 Fed. Rep. 390; *Hyams* v. *Calumet,* 221 Fed. Rep. 529, 537; *Crichton* v. *Webb Press Co.,* 36 Southern Rep. 926; *Jones* v. *Green,* 88 N. W. Rep. 1047. Robbins was, under the facts in this case, subject to all the duties and liabilities of a director of this insolvent corporation. He was directing and controlling its affairs by and through McKinnon and Shaw and his liability as such trustee attached at the time when he in fact commenced to exercise control over the destiny and affairs of the corporation.

Defendant in Point 8 of its brief (pages 36-39) contends that no preference was given Robbins as a creditor over the other creditors.

In his brief he speaks of "the Chase management" in an effort to distinguish between himself on the one hand and Chase on the other. Chase was his *alter ego* throughout, and the Vice-Chancellor very properly stated that he would treat them as one.

They were both very evidently working in the interest of the New Haven Railroad, which had put up the money.

The transaction was not purely a business one, as is claimed in the defendants' brief.

The theory of the purchase of the property of the defendant company, as testified to by Chase, and as now contended for in the brief of the defendants, was that it was purely a business deal by which Chase and Robbins expected to make some money (defendants' brief, page

13). According to the scheme, as stated in the brief (p. 14), "Mr. Robbins was to provide the funds for this purchase and was to own the capital stock of the new Maine corporation (Maine No. 2), and all of the purchased securities of the present Metropolitan Steamship Company of New Jersey (defendant company), except the capital stock, which was to be the property of Mr. Chase."

This theory, which has evidently been invented in an effort to answer this suit, becomes perfectly absurd on analysis, for the following reasons:

1. Mr. Chase, by his own confession, did not advance a dollar to the enterprise. He says that Mr. Robbins gave him the stock (p. 224, ll. 1-30). Mr. Robbins, as the record shows, did not advance a dollar either. The money which went to pay for the whole transaction was the money of the New Haven Railroad, furnished by its subsidiary, the New England Navigation Company. The defendants' brief does not deny this.

2. After Chase had acquired the stock he was afraid to own it openly, and caused, through his agent, Nicholson, and a set of dummy directors, the Chilmark Company to be incorporated, the sole purpose of which was to hold the 14,323 shares of stock of the defendant company. Chase admitted that he had caused the Chilmark Company to be incorporated for the sole purpose of holding this stock (Chase, p. 218, l. 20, to p. 219, l. 15). See also testimony of Linz (p. 887), and Kaseman (p. 895), two of the dummies who participated in the transaction.

3. Chase said that in 1910 the defendant company was practically bankrupt. His explanation as to why Mr. Robbins desired to buy a

bankrupt company for an investment, which was the theory of the purchase, was as follows (p. 257, l. 32):

> Q (*By the Court.*) Will you tell me, if you know, Mr. Chase, if it was ever discussed as to why Mr. Robbins wanted to buy into a bankrupt concern? A Why, he was interested in obtaining the freight boats and Union Wharf, because he thought that he could manage those boats profitably, and afterwards dispose of them, as he hoped, to the Eastern Steamship Company.
>
> Q (*By the Court.*) It was not from any eleemosynary interest in the stockholders of the Metropolitan Company, was it? A No; he thought there was a business opportunity there for him to make money out of the operation of the freight boats.
>
> Q (*By the Court.*) For himself? A For himself.

4. This theory involved Mr. Robbins, the general counsel of the New Haven, and the very incarnation of that company, competing in business with the New Haven. There was no other traffic by water between New York and Boston, apart from the defendant company, except those lines operated by the New Haven. Chase's testimony, at page 258, l. 10, was as follows:

> Q Didn't he know that as between the freight boats and the Harvard and Yale the paying end of the business was the Harvard and Yale? A I don't think anybody knew that.
>
> Q You and Mr. Robbins at that time thought these freight boats were a great financial asset? A The freight boats were then being operated at a loss by the Metropolitan Steamship Company, but Mr. Robbins thought that he could utilize them in such a way, by establishing traffic connections and by giving them good management, so that they would earn him a profit, and that afterwards he would be enabled

to dispose of them at a price above what they cost.

Q Mr. Robbins thought he would go into the steamship business? A Yes.

Q Between what ports? A At that time between Boston and New York.

And again (p. 259, l. 22):

Q So Mr. Robbins was proposing to operate a steamship boat line for freight between Boston and New York? A Yes.

Q In competition with the boats operated by the New England Navigation Company? A In competition with whatever was running at the time.

No wonder the Vice-Chancellor said in his conclusions (p. 2145, l. 3):

> It is taxing my credulity to the greatest extent to ask me to believe that Robbins acted throughout this transaction on his own behalf, and that he intended to acquire the control of the Metropolitan Steamship Company for the purpose of operating it in competition with the Railroad. Indeed, the testimony of Chase (Robbins' representative) is to the effect that from the beginning it was within the contemplation of Robbins to dispose of the freight boats, he says, to the Eastern Steamship Company, a concern then operating between Boston and ports in Maine. I am inclined to believe that whatever was done by Robbins was done in the interest of the Railroad. I do not mean that he had authority to act, but I think he thought he was so acting. If the Railroad intended to acquire these boats or to stifle their competition, but was afraid to act directly because of the Sherman Act, no better plan of procedure could have been adopted than was adopted, whereas if Robbins was acting independently and legitimately it is hardly conceivable that any such plan would have been followed.

5. Although Chase theoretically owned the Harvard and Yale, and Robbins had no interest in them, Robbins continued to be the dominant mind in their management. As already appears, in the summer of 1910 he was corresponding with McGovern, looking toward the transfer of the Harvard and Yale to the Pacific Coast, and delegated to Mr. Nicholson the drawing of the proper papers to that end. In October, 1910, he was actively negotiating with Captain Goodall for the formation of the Pacific Navigation Company, and the financing of the Harvard and Yale to the Pacific Coast. To bring this about, Captain Goodall, his confederate in the matter, formed the Pacific Navigation Company, and to finance the transfer of the ships Robbins formed the Pacific Company, a Connecticut corporation.

Chase admitted that the reason for the making of the second mortgage was to finance the expedition to the Pacific Coast (p. 264, l. 10). The stock of the Pacific Company, which owned $250,000 of the second mortgage bonds, was owned by the Pacific Navigation Company and Mr. Robbins (Chase, p. 267, l. 19), the confederates in the transfer of the Harvard and Yale to the Pacific Coast. Chase admitted that Robbins, through his larger stock ownership, controlled the Pacific Company, because the preferred stock of the Pacific Company was afterwards retired and the Pacific Navigation Company afterwards got its money back, leaving Robbins in final control of the Pacific Company (Chase, p. 268, ll. 10-18). The stock was paid for by the earnings of the Harvard and Yale, and Robbins and the Pacific Company got the benefit of it. Chase's testimony (at p. 269, l. 8) was:

> Q The money which the Harvard and Yale earned under its operating agreement

was paid under the sinking fund agreement to Mr. Greening? A Yes.

Q And part of that money went to pay off the stock of the Pacific Company, did it not? A A part of it went to retire the second mortgage bonds held by the Pacific Company.

Q Which in turn had been taken for stock? A The Pacific Company used the proceeds in paying the interest upon accumulated dividends upon its preferred stock, and also in retiring it.

Q When you get through with the last analysis the money did go to pay off that stock through the medium of the payment of the bonds? A It came from that source.

Q (*By the Court.*) Has all of the stock been retired? A All of the preferred stock, yes.

Q (*By the Court.*) At how much? A I do not recall how much of the common has been retired.

Q (*By the Court.*) No, no. A Oh, two hundred and fifty thousand of the preferred.

Q (*By the Court.*) At what? A It was retired, I think, at par, it may have been at one hundred and ten. The certificate of incorporation of the company showed just what could be done.

Q (*By the Court.*) Some of the common stock has also been retired? A I think it has.

Q (*By the Court.*) You do not know how much of that? A No, I do not.

Q So that reimbursed both Mr. Robbins and the Pacific Navigation Company for the two hundred and fifty thousand dollars in cash which they had put up at the beginning of the transaction, did it not? A I think they got as much as that back and more.

Chase admitted that the expense of getting the ships around to the Pacific Coast was $140,000 (p. 270, l. 40).

Robbins participated in all the work of the creation of these companies, the making of the second mortgage, the execution of the operating contract with the Pacific Navigation Company, etc., although his freight boats and Union Wharf, which he alone had an interest in, were in no manner involved. Chase testified as follows (p. 544, l. 25):

> Q And Mr. Robbins participated in that all the way through? A He participated in the conferences and in the second mortgage bonds, and in the operating contract.
> Q His freight boats were not involved in that in any respect? A No.
> Q Or his Union Wharf? A No.

6. Since the transfer of the Harvard and Yale to the Pacific Coast, Robbins has been active in their management.

When the lease with the Pacific Navigation Company came to an end, Robbins went to California, in June of 1916 (Chase, p. 530, l. 18), and while out there the lease with the Pacific Alaska Company was drawn up, signed by the Alaska people, and sent on to Chase to be signed by the defendant company (Chase, p. 530, ll. 20-40, and p. 531, l. 20), where Chase said "Mr. Robbins was representing us out there."

7. Robbins loaned his credit in the interest of the Harvard and Yale, although he was supposed to have no interest in it.

In December, 1916, the defendant company borrowed $30,000 from the Connecticut Trust & Safe Deposit Company, of Hartford (Chase, p. 539, l. 37). To secure this loan Robbins endorsed the company's note (p. 541, l. 20):

8. Robbins has been active in the conduct of this case.

He was present when the defendant took the depositions of Mr. Clark at New Haven (p. 1667, l. 32). He was also present when the complainants took the deposition of Mr. Clark, at Hartford (p. 325, ll. 15-27).

At the time the defendant took the deposition of Mr. Mellen, counsel for the defendant had also given notice of the taking of the deposition of Mr. Robbins. At the conclusion of the taking of those depositions he failed to call Mr. Robbins, but said (p. 1720, l. 11): "I will say now that I am not going to call Mr. Robbins to give his deposition on this notice because he has informed me that he will be present at the hearing in Newark, and testify at that time." Mr. Robbins was present at the hearing in Newark, but failed to take the stand (p. 2139, l. 2).

PROFITS RECEIVED BY ROBBINS ON THE TRANSACTION.

Robbins expended in the purchase of securities on March 5th, 1910....$1,500,000.00

For the 347 bonds of the Metropolitan Steamship Co. purchased from the Hudson Navigation Company ... 277,600.00

$1,777,600.00

(The Vice-Chancellor finds (p. 2151, l. 24) that Robbins used the funds, aggregating $266,387.13, that the Metropolitan Steamship Company, the defendant, had on hand at the time he took over said company, to purchase said bonds from the Hudson Navigation Company.)

Robbins received

Demand notes of the Metropolitan Steamship Co. $375,923.14

One of the two-year 6 per cent. notes, dated November 19, 1909, due November, 1911, paid to Robbins....	25,000.00
The remainder of the two-year 6 per cent. notes of the face value of.. with interest from November, 1909.	475,000.00
(These notes were sold to the Pacific Company by Robbins in exchange for $500,000 of second mortgage bonds, and then the notes were surrendered to and cancelled by the Metropolitan Steamship Company of New Jersey.)	
At the time of said sale the interest on said notes amounted to	25,000.00
Ten year non-interest bearing notes of the Metropolitan Steamship Co. of New Jersey, due November 19, 1909	683,895.21
(Robbins also owned the capital stock of the Metropolitan Steamship Co. of Maine No. 2, to the amount of $3,000,000. This stock should be considered as merged into the Union Wharf and freight boats.)	
For the Union Wharf at Boston, sold by the Metropolitan of Maine No. 2 to the Maine Steamship Company, in 1911	400,000.00
First mortgage bonds issued by the Eastern Steamship Corporation in payment of the freight boats and equipment of the Metropolitan Steamship Company of Maine No. 2, which freight boats and equipment had formerly been owned by the Metropolitan Steamship Company of N. J.	1,700,000.00

(Some of the bonds of this issue sold within a few months after the formation of the Eastern Steamship Corporation, at 97½.)	
Shares of the common stock of the Eastern Steamship Corporation, at that time of the par value of $50 per share, delivered to Robbins as owner of the Metropolitan Steamship Co. of Maine No. 2, as part of the consideration for the freight boats	425,000.00
Second mortgage bonds of the Metropolitan Steamship Company now due, held by the Pacific Company	286,000.00
14,373 shares of the stock of the Metropolitan Steamship Company of the par value of $100.....	1,437,300.00
Total received	$5,833,118.35

Out of this total Robbins has received in cash the following sums:

Demand notes of the Metropolitan Steamship Company, not including interest	375,923.14
One of the 6 per cent. two-year notes, not including interest	25,000.00
Union Wharf in Boston	400,000.00
Second mortgage bonds held by the Pacific Company	500,000.00

(We have not drawn any distinction between Robbins and the Pacific Company in making the statement above for the reason that Robbins now owns and controls the Pacific Company.)

Is it any wonder, therefore, that the Vice-Chancellor says (p. 2157, l. 15) that if Robbins has made any profit out of the transactions, he

should be called upon to account, and that in the order appointing the equity receiver (pp. 2176-2181) he authorized the receiver to institute any suits or actions to recover the assets and protect the rights of the defendant company (p. 2178, l. 20, &c.).

In defendants' brief (point 12, p. 42) objection is made to bringing such suits. Perhaps it is not unnatural that Robbins, in the guise of the defendant company, which he owns and dominates, should object to suing Robbins individually, for the profits which he has made out of the transaction, as well as the New Haven Railroad, in whose interests Robbins was undoubtedly working.

THE COURT PROPERLY ADMITTED CREDITORS AS CO-COMPLAINANTS.

This order was made toward the close of the hearing.

The bill was filed as a stockholders' bill, and as such was properly filed. There was no dispute that stockholders could properly file such a bill. The only attack made on the complainant stockholders is that their holdings of stock are small, being 192 shares. This amount of stock, however, is almost one-third of the 677 shares outstanding not in the possession of the Robbins interests.

The bill, therefore, being properly filed, and the case coming on for final hearing, the suit was one which had to be heard, and as the Vice-Chancellor very pertinently pointed out (p. 113, l. 3):

> *The Court.* If a motion to strike out were made I should follow the rule and under the rule I should postpone the determination

> until the conclusion of the final hearing, for the reason that the testimony has got to be gone through with in any event upon the suit of the stockholders, and it seems to me that if these creditors have any rights at all it is much better for both sides and for the Court to get them into court and have the decree which will be made covering every one interested in this corporation, creditors and stockholders alike.

and see generally pages 98-113 for a report of the argument between Court and counsel on this subject.

The complainant stockholders are the holders of some of the ten-year notes. The fact that these notes are not yet due in no manner militates against their rights as creditors to join in a suit for the appointment of a receiver.

The English authorities fully sustain this view.

In *McMahon* v. *North Kent Iron Works Co.*, English L. R. Ch. Div. 1891, Vol. 2, 148, the plaintiff was a holder of first mortgage debentures which provided for the principal becoming due on default of the interest. It appeared that no actual default had yet been made in any half yearly payment of interest on the debentures.

Counsel argued as follows (p. 150):

> "Although there has been no actual default in payment of interest, and the principal is not immediately payable, yet a present charge exists; and the debenture-holders are entitled to have their existing security, which is now obviously in jeopardy, protected. In In re Panama, New Zealand, and Australian Royal Mail Company, Law Rep. 5 Ch. 318, where the interest on debentures was in arrear, but the time for pay-

ment of the principal had not yet arrived, Lord Justice Giffard held that a debenture comprising all the undertaking of the company gave the holder a present charge entitling him to priority over other creditors; but it does not appear from the report whether, if interest is not in arrear, although the company may be practically insolvent and so unable to go on, the debenture-holder may nevertheless interfere. There is no reported case exactly in point; but in a recent unreported case of a similar nature, of Morristown *v.* Railway Share Trust, Mr. Justice North made an order such as that now asked for. Upon principle, a mortgagee is entitled to have his security protected, if it is in jeopardy, such as if waste is taking place. Here the appointment of a receiver would be for the benefit of every one."

Upon this the Court said:

"In my opinion, upon principle, the application is right, though I am not aware of any direct authority upon the point. As a matter of principle a mortgagee has a right to the protection of his security if it is in jeopardy. Accordingly, I appoint Mr. Young receiver of the property and assets of the company comprised in the plaintiff's security until judgment or further order."

This case was followed in *Edwards* v. *Standard Rolling Stock Syndicate,* English L. R. Ch. Div. 1893, vol. 1, p. 574. The plaintiffs were holders of mortgage debentures. The interest was not in arrear. It appeared that judgment had been rendered against the company and the sheriff had levied on goods and chattels of the company comprised in the debentures. Counsel argued as follows (p. 576):

"Though there is nothing yet due in respect of the debentures, yet the Court will protect the plaintiffs' security by the appointment of a receiver; McMahon *v.* North Kent Iron Works Company (1891) 2 Ch. 148."

And the Court said (p. 577):

> "I must follow Wildy *v.* Mid-Hants Railway Company, in which, at the instance of debenture-holders, who were mortgagees of the undertaking of the company, Lord Chancellor Chelmsford held that a receiver of the undertaking could be appointed, though the mortgage money had not become due when the bill was filed."

In *Iauch* v. *Socarus,* 56 N. J. Eq. 524, Vice-Chancellor Pitney sums up the rules governing creditors' bills, and distinguishes between that class of suit, which is brought for the benefit of the individual creditor alone, and those suits which are brought for the benefit of other creditors besides the complainant. The bill before him was filed for the benefit of complainant alone. He said (p. 528):

> "And here it seems to me is found the true test as to whether a suit is or is not brought for the benefit of other creditors besides the complainant. Is its object scope and natural result to recover and establish a fund which shall be administered by the court for the benefit of all creditors of a certain debtor."

Judged by this test, the complainants were properly admitted. They were noteholders of 10 year notes, of which roughly $1,500,000 were outstanding, and they were admitted as creditor complainants upon the ground that they be bound by all proceedings which had theretofore taken place in the suit (p. 2173, l.20, &c.), and their admission into the suit simply extended its scope to one for the benefit of creditors as well as stockholders.

See also

Wilkinson v. *Bauerle,* 41 N. J. Eq., 635.
Williams v. *McKay,* 40 N. J. Eq. 189.
Landis v. *Sea Isle Hotel Co.,* 31 Atl., 755; 53 N. J. Eq. 654.

A case quite in point is *Hayes* v. *Pierson*, 65 N. J. Eq., 353.

There the Celluloid Co., through its receiver, filed a bill against the Electric Emery Wheel Co. and two of its directors, charging that the directors had violated a trust in that they had given the president an excessive salary, and in that they had entered into a contract with the Electric Co. of which they were directors and sole stockholders, the effect of which was to divert the business and assets of the Celluloid Co. to the Electric Co. and that one of the means of this diversion was a fraudulent suit, resulting in a judgment against the Celluloid Co. and an execution and sale of its tangible assets to the Electric Co. Upon these facts the Court said (p. 354):

> "The case was heard on the pleadings and proofs. At the hearing the complainant called witnesses to sustain the allegation of his bill. The defendants called no witnesses to disprove the complainant's charges. They took the position that as the salary was voted and the contract was made while the Celluloid Company was a going concern and solvent, the directors did not then sustain toward the creditors of the company the relation of trustees, and that they are not liable to account to the creditors or to their representative, the receiver, for their management or mismanagment of its affairs. The authority cited was Landis *v.* Sea Isle City Hotel Co., 31 Atl. Rep. 755; on appeal, 8 Dick. Ch. Rep. 654.
>
> The rule thus formulated may, in general, be true, but it has no application to a case in which the mismanagement, producing insolvency, consists in diverting all the assets of the company to the directors themselves or to a company of which they are the sole stockholders. For such a breach of trust the receiver may, I think, sue for the benefit of creditors."

The principle of *Hayes* v. *Pierson* is particularly applicable to the case at bar for the reason that the Metropolitan Steamship Co., the defendant, was admittedly insolvent in 1910, and through its dummy board of directors, which is controlled by Robbins, has diverted all its assets to companies which Robbins controls, and through the medium of the second mortgage has placed Robbins in the position of a preferred creditor over the noteholders.

If, as is contended, the admission of these creditors as parties complainant made the bill multifarious, that was a matter which was entirely within the discretion of the Trial Court, and under the circumstances of this case the discretion was properly exercised.

THE COURT PROPERLY APPOINTED A RECEIVER UNDER THE EQUITY POWER OF THE COURT.

The Vice-Chancellor made this appointment after he had heard the evidence in the case, the arguments of the counsel, and had filed his conclusions of fact. He was then of the opinion—and the analysis of the testimony shows that he was correctly so—that the complainants were entitled to relief. The only question was what would be an adequate relief. The defendant company, under the control of Robbins and his dummies, had up to that time successfully stood off the stockholders and 10-year noteholders, and in fact all of the parties in interest of the corporation outside of their own crowd. In his conclusions on the law the Vice-Chancellor said (p. 2167, l. 30):

> "The history of this case shows to what extent the complainants or anyone investigating the affairs of the company can expect

assistance from the directors. Weeks have been spent in the trial. No information was given to the complainants who were stockholders and creditors; each bit of information had to be drawn out piece by piece; enormous expense has undoubtedly been put upon the corporation in defending this suit in the interest of Robbins. All of this would have been unnecessary if a frank disclosure of what had been done had been made in the beginning. It is not a case where there is a real dispute as to the facts or as to what actually took place. I can conceive, of course, the directors opposing this suit to the uttermost of their power if there was a substantial dispute as to what had been done. The court could have immediately upon the disclosure of the facts determined under the law whether they amounted to fraud. What the defendants did was to have put the complainants to as much trouble as possible in getting at practically admitted facts. I do not consider that directors who have acted in this way are in any position to ask me to permit them to remain in charge. I draw no distinction between the present directors, who were elected last year, and those who preceded them; they are all dummies and all take their orders from Chase or Robbins. None of the assets are in this state nor are any of the present directors residents of this state or parties to this suit; there are none subject to the jurisdiction of this court except only as they may be directors of the Metropolitan Steamship Company. Pending this suit the directors who were parties have been supplanted by three others, non-residents. If this company was an operating concern, whose business might be hurt by the appointment of a receiver, there would be, of course, a further argument against any hasty action by this court. It is not. Its only function at the present time is to receive the rents from the Harvard and Yale, which are under a five-year lease on the Pacific coast, and pay such debts as may incidentally accrue. There is

> no discretion to be exercised. The directors have effectively foreclosed themselves from exercising any discretion. Whatever the directors of this company might do can as well be done by a receiver."

The bill as it stood at the time this appointment was made, did not seek a dissolution of the company.

In addition to the general prayer for relief the bill prayed in accordance with the character of relief prayed in *Edison* v. *Edison United Phonograph Co.*, 52 N. J. Eq., 620, at page 621. A reading of the opinion in that case shows very clearly that such a prayer will be granted if there has been fraud in the company's management. In that case the board of directors was divided into two factions, holding opposing views as to the management of the business. Each was sincere, and as the Court stated, at page 624, "neither denies or impugns the good faith and honesty of the other."

The facts at bar are entirely different.

The case at bar is peculiar in that the officers and directors who have brought about the extraordinary state of affairs in which the company finds itself, are and from the beginning have been, entirely irresponsible. All that they did, they have done at the bidding of Robbins, through Chase, and Robbins is neither a director or an officer, and until only lately Chase was neither a director or an officer. The principle, so firmly settled, that directors are trustees for the stockholders, while perfectly true, as applied to this case falls short of furnishing adequate relief. An extraordinary feature of the situation here is that the directors, who, at the bidding of Robbins, wrecked the

company in the interest of Robbins, themselves received but minor benefit therefrom. With the exception of Chase, the others obtained nothing beyond payments of comparatively small sums for their services rendered. Chase has benefited by obtaining practically the entire stock of the company, and Robbins has benefited himself by hundreds of thousands of dollars. Neither of them put up a dollar for the original purchase. This money was furnished by the Railroad Company.

The books will be searched in vain for the report of any case in the courts of our own State of such bold, unscrupulous and successful fraud as was perpetrated by Robbins, through his control over the minds and actions of dummies, as was the situation here. Although no parallel case in fact exists, the principles which enabled the Court to act are well founded in our jurisprudence, and are also laid down by other authorities. It will be observed that the order appointing this receiver was carefully drawn (pp. 2176-2181). It took the title of the defendant company's property out of its directors, and put it in the hands of the receiver, and made him its legal custodian and manager. It was in no sense a final order, for it did not affect the final merits of the case.

See

Decker v. *Ruchman,* 15 Stew., at page 616.

Morton v. *Beach,* 11 Dick., 791.

In *Beach on Receivers,* Alderson's edition, sec. 86, page 100, it is said:

> "The courts have not the power to appoint receivers to wind up the affairs of corporations in the absence of statutory provision. But if the property of a corporation is be-

> ing mismanaged, and is in danger of being lost to the stockholders and creditors through the collusion and fraud of its officers and directors, or mismanagement and waste, courts of equity have inherent power to appoint receivers."

In *Pride* v. *Pride Lumber Co.,* 84 Atl. (Supreme Court of Maine), 989, the plaintiff was a minority stockholder. The bill alleged that the individual defendants, who were directors of the defendant company, had corruptly and collusively conspired to wreck the company, and to convert its property to their own use as individuals, in fraud of the corporation, and in violation of their duties as directors. The prayer was that the company be restrained from paying the president and treasurer any salaries, and from expending any of its funds, and that the president and treasurer be decreed to be trustees of the corporation in respect to all sums received by them, and that they be ordered to restore to the company all moneys wrongfully withdrawn, and that a receiver be appointed to receive the property and to make disbursements as might be directed by the court (p. 990).

The Court granted the relief as prayed, and appointed a receiver, largely on the authority of *Fougeray* v. *Cord,* 50 N. J. Eq. 185.

The Court observed that the bill was not filed under the statute; that (p. 991) "it does not pray in general for a winding up of the affairs of the corporation, nor for its disallowance." (Nor did the bill here pray any such relief.) The Court then commented on the fact that ordinarily in the absence of statutory authority, a court of equity would not wind up a

corporation at the suit of a minority stockholder, and went on to say (p. 992):

> "But, without winding up the affairs of the corporation, the court in equity may at the suit of a stockholder or creditor appoint a receiver, where corporate property has been abandoned and is exposed to certain injury or loss, or where the corporation has no officers to care for its property (Beach on Receivers, §421; Lawrence *v.* Insurance Co., 1 Paige (N. Y.) 587), or, where by the acts of the directors, the corporate property is exposed to imminent peril (Thompson *v.* Greeley, 107 Mo. 577, 17 S. W. 962), or where the directors have been guilty of a breach of trust, and the property is in danger of future injury and waste, unless withdrawn from the reach of danger (Fougeray v. Cord, 50 N. J. Eq. 185, 24 Atl. 499; *4 Thompson on Corporations,* §4545), and doubtless there may be other grounds. The case of Fougeray *v.* Cord, *supra,* is in many respects analogous to the case at bar, and the doctrine of that case justifies the appointment of a receiver in this one. The doctrine is founded on the breach of trust and fraud of the managing directors.
>
> In this case we think we are without jurisdiction upon this bill to wind up the affairs of the corporation. Nevertheless, we think we may properly afford complete relief to the plaintiff. The corporation is out of business. It has no assets of importance. Such assets as it has in hand will go but a little way towards satisfying the plaintiff's claim. The court has jurisdiction of the fund which may be restored by these individual defendants, and such moneys as may come into the hands of the receiver. In some cases, particularly in the case of going concerns, the court would order the fund paid into the treasury for the uses of the corporation. But in this case the corporation has no use for the fund except to pay the plaintiff's claim. And the collusive and fraudulent conduct of the managing directors has been such as to

> afford sufficient reason for not placing the fund again under their control. Under such circumstances, we think the court has incidental jurisdiction to administer the funds, without remitting the plaintiff to the remedy at law."

The Court, therefore, affirmed the decree, except it modified it by omitting the provision for a perpetual injunction, as that was appropriate only to the winding up of a corporation. A receiver was appointed.

Another case of flagrant fraud was *Miner v. Belle Isle Ice Co.* (Supreme Court of Michigan), 53 N. W., 218. The bill was filed by a stockholder against the corporation and its directors. One Lorman held a majority of the stock, and dominated the other directors, by means of which he was enabled to fraudulently operate the company in his own interest. The lower court refused to appoint a receiver as prayed, but the decree was reversed and a receiver appointed, and Lorman was required to account and pay the money over to the receiver. The Court placed its decision upon sound legal principles, which were sustained by the cases cited, and said (p. 224):

> "The present case furnishes an instance of gross abuse of trust. Must the *cestui que trust* be committed to the domination of a trustee who has for seven years continued to violate the trust? The law requires of the majority the utmost good faith in the control and management of the corporation as to the minority. It is of the essence of this trust that it shall be so managed as to produce for each stockholder the best possible return for his investment. The trustee has so far absorbed all returns. What is the outlook for the future? This court, in view of the past, can give no assurances. It can make no order that can prevent some other

method of bleeding this corporation, if it is allowed to continue. If Lorman be removed, who shall take his place? *He has the absolute power to determine.* Once deposed he may let a dummy to fill his place. There are practically but three persons concerned, Miner, Lorman and Lorrissa Carpenter, and she has for seven years, in fraud of complainant's rights, been paid a dividend to secure her acquiescence. Who has any right to complain if ample and complete justice is awarded to Miner? Who should be permitted to stand between him and an adequate remedy? This corporation has utterly failed of its purpose, not because of matters beyond its control, but because of fraudulent mismanagement and misappropriation of its funds. Complainant has a right to insist that it shall not continue as a cloak for a fraud upon him, and shall not longer retain his capital to be used for the sole advantage of the owner of the majority of the stock, and a court of equity will not so far tolerate such a manifest violation of the rules of natural justice as to deny him the relief to which his situation entitles him. I think a court of equity, under the circumstances of this case, in the exercise of its general equity jurisdiction, has the power to grant to this complainant ample relief, even to the dissolution of the trust relations. Complainant is, therefore, entitled to the relief prayed. A receiver will be appointed, and the affairs of this corporation wound up."

A case very pertinent to this issue is *U. S. Shipbuilding Co.* v. *Conklin* (C. C. A.), 126 Fed., 132. The bill was filed by first mortgage bondholders and stockholders of the defendant company. It alleged that the company was insolvent and prayed for a receiver. In addition to the allegation of insolvency the bill contained this allegation (p. 134):

"Twenty-ninth. Your orators further state that it is necessary in the interest of all

> the stockholders of the defendant that a receiver, representing all the stockholders and creditors, should bring suit against the directors of said defendant and all others who have received stock and bonds of said defendant without any consideration, and should bring suit in the interest of all the stockholders and creditors of said defendant against the directors for the damages suffered by the corporation by their mismanagement of its affairs, and for a proper accounting, and to cancel all stock of defendant that was illegally or improperly issued, and to rescind the transaction of the purchase of the Bethlehem Steel Company, and recover back the consideration paid on such purchase."

The lower Court found that the company was insolvent and appointed a receiver. The Circuit Court of Appeals modified the order and sustained the receivership, not on the ground of insolvency, but under the general equity power of the Court. Judge Acheson said (p. 136):

> "But the bill of complaint here does not rest upon the statute of New Jersey exclusively. It sets forth a case cognizable by the court under its general equity powers. The bill not only alleges that the defendant corporation was insolvent, but, as we have seen, it charges that such insolvency was produced by the gross mismanagement of its directors; and, furthermore, the bill charged the directors with positive misconduct involving breach of trust. Insolvency of a corporation, coupled with gross mismanagement of its affairs by its board of directors, and such misconduct of the directors as is here charged justify the appointment of a receiver by a court of equity independently of any statutory authority. Towle *v.* American, etc., Society (C. C.) 60 Fed. 131; Doe *v.* Northwest Coal, etc., Co., 64 Fed. 928; Aiken *v.* Colorado River Irr. Co. (C. C.), 72 Fed. 591;

Arents *v.* Blackwell's Durham Tobacco Co. (C. C.), 101 Fed. 338.

Upon the whole, we are of opinion that the bill presented a case of which the Circuit Court sitting in equity had jurisdiction, and that the appointment of a receiver was within the authority of the court. We also think that there was evidence to sustain the findings of the court and to justify the order appointing a receiver. Whether a receiver should be appointed was a matter largely within the discretion of the court, in view of the special circumstances of the case. Upon a careful examination of the evidence, and having regard to all the circumstances, we cannot say that the order appointing a receiver and granting an injunction was improvidetly made.

It was urged at the argument that the order appealed from is equivalent to a final decree. Although there is no assignment of error to bring this question before us, still it deserves present consideration. As we read the order it was not intended to be a finality, and is not so in legal effect. The Franklin Electric Light Company *v.* Ft. Wayne Elec. Corp., 58 N. J. Eq. 543, 43 Atl. 650. But, to remove any possible doubt on this point, we will amend the order by striking from the fifth paragraph the concluding words, 'and especially by the act of the Legislature of the State of New Jersey, entitled, "An act concerning corporations, Revision of 1896,"' and substitute therefore the words, 'the receiver to be subject at all times to the orders and directions of this court,' and we will add at the end of the order the following provision, 'the foregoing order to stand until the further order of the court'; and as thus amended the order of June 30, 1903, is affirmed."

In *Columbia Nat. Sand, &c., Co.* v. *Washed Bar, &c., Co.*, 136 Fed., 710, a bill was filed in equity for a receiver. It appeared that the defendant company was controlled and conducted

alone by one Robert Paterson, who was also a stockholder. The Court described the facts as follows (p. 711):

> "From 1893 to January 1, 1898, the defendant company was controlled and conducted alone by Robert Patterson, at the office of the Philadelphia Transportation & Lighterage Company, the stock of which belonged to Joseph G. Patterson and his two sons, and to which company the defendant corporation paid an annual sum of $1,700 to manage and conduct its affairs. There was no management on the part of the board of directors, but its affairs were managed as though they were owned personally by Robert Patterson. The lighterage company purchased the entire product of the defendant company at a certain sum per ton. The money advanced by the Pattersons for building the machine was charged up as a loan against the defendant company in favor of the Philadelphia Transportation & Lighterage Company, upon which interest at 6 per cent. was paid since 1893. Neither Loper nor Grady took any interest in the management of the corporation, and in fact was not aware that they were the owners of any stock. From May, 1893, to January 1, 1898, the defendant company was conducted at a loss, while the Philadelphia Transportation & Lighterage Company was conducted at a profit."

The Court then commented on the fact that it was not alleged that the company was insolvent, but on the other hand it was claimed that the payment of an amount due by the Pattersons and the Philadelphia Transportation & Lighterage Co., together with the amount which should have been paid in as capital of the concern, would make the stock valuable and show a surplus. The Court also pointed out that the officers managing the concern were doing so entirely for their own profit, and that it

would be useless to make a demand on them for relief. The Court, by Judge Holland, then said (p. 712):

> "Courts will not take the property of a corporation out of the possession of its owners at the suit of a minority stockholder, without there is a very grave necessity therefor; but where the facts recited in a bill charging mismanagement show that the board of directors who are responsible for the management are the majority stockholders, and that they are managing the corporation for their own benefit, and diverting its funds and income to themselves, the minority stockholders, or any of them, would be entitled to relief, either by injunction, where that remedy would correct the evil, or, if necessary, the appointment of a receiver, and the majority stockholders who violated their trust would have just cause of complaint. A receiver will be appointed where the majority stockholders are clearly violating the chartered rights of the minority and putting their interest in imminent danger, or where the holders of the majority of the stock neglect to elect officers. Smith on Receivers, §225 (j); State of Montana, etc., *v.* Second Judicial District (Mont.) 39 Pac. 316, 27 L. R. A. 392, 48 Am. St. Rep. 682; Dodge *v.* Woolsey, 59 U. S. 331, 15 L. Ed. 401; Pond *v.* Railroad Company, Fed. Cas. No. 11,265; Ervin *v.* Railroad Co. (C. C.) 27 Fed. 626; Aiken *v.* Colorado etc. Co. (C. C.) 72 Fed. 591. And this last case was referred to and affirmed in the case of Leary *v.* Columbia River, etc. Co. (C. C.) 82 Fed. 777.
>
> Such temporary receivership may be created where the corporation is entirely solvent, yet the corporate officers, by mismanagement or fraud, are jeopardizing the property. This gives stockholders and creditors a right to complain and ask for a receivership. Cowan *v.* Plate Glass Co., 184 Pa. 9, 38 Atl. 1075. And it is not enough to defeat jurisdiction in equity that there is a remedy at law. The remedy must be complete, prompt and effi-

cient. Gluck & Becker on Receivers of Corporation §19, for which many authorities are cited in the notes."

The comment of the Court that the remedy must be complete, prompt and efficient is particularly pertinent here.

See also *Dupuy* v. *Transportation, &c., Co.* (Court of Appeals of Maryland), 80 Atl., 889, which is quite pertinent both because of the astonishing fraud there enacted, which makes it not unlike this case, but also because of the character of relief awarded. The Court said (p. 895):

> "We have, then, illegal conduct, fraudulent acts, and *ultra vires* proceedings; and a court of equity is asked by the persons who have been victimized to appoint a receiver, who may rip open all these actions. Can it refuse to grant relief? If it is powerless to do so, not only would the law be open to grave reproach for inefficiency, but serious wrongs would go unredressed, and fraud of a stupendous character would escape and go unrebuked. It is not for us to say what particular assets or property a receiver can, when appointed, recover. It is enough for the purpose of this case for us to be able to see from the record that wrong and fraud have been perpetrated, and that this is an eminently fit case for the appointment of a receiver, to unmask and rip open whatever is not beyond the reach of successful assault."

The decree of the Court below, which had dismissed the bill, was reversed.

> *Exchange Bank* v. *Bailey,* 116 Pac., 812.
> *Pomeroy's Eq. Jur.,* vol. 5, ch. 116.

In all of these cases there was some active fraud to which the company, through its directors, was a party, as result of which the company was defrauded of its property. In

every case there was a dominating mind which acted upon the directors very much as Robbins, through Chase, acted upon the directors here. In the DuPuy case, the dominating mind was outside of the board of directors, as was the situation here. In every case the court appointed a receiver without reference to the question of the insolvency of the company, and as an aid to the minority stockholders and creditors in recovering the property which had been fraudulently stolen or wasted.

Our courts have never hesitated to appoint a receiver as an aid to stockholders and creditors where fraud has been perpetrated upon them. The principle has already been referred to as laid down in *Edison* v. *Edison United Phono. Works,* 52 N. J. Eq., 620.

In *Fougeray* v. *Cord,* 50 N. J. Eq., 185, Vice-Chancellor Pitney appointed a receiver on broad principles of equity, in order that the receiver might receive the property which the company had fraudulently been deprived of, to be held by him in trust for the conveyance to the persons entitled to it. In the course of his opinion he said (p. 199):

> "It is well settled that the officers of a corporation occupy to its stockholders the relation of trustee and *cestui que trust,* and on that broad ground are liable to be called upon to account for their conduct in this court. Morawetz Corp. §381; Cook Stock. §648. But if this ground is not, strictly speaking, true, I agree with Mr. Cook that reliance may well be placed upon the broad principle laid down by Lord Hardwicke, one hundred and fifty years ago, in Sir Robert Sutton's Case, a case similar to the one now before the court, reported in 2 Atk. 400. At p. 406 he says: 'The tribunals in this Kingdom are wisely formed both of courts of law and equity, and so are the tribunals of most

other nations, and for this reason there can be no injury but there must be a remedy in all or some of them, and therefore, I will never determine that frauds of this kind are out of the reach of courts of law or equity, for an intolerable grievance would follow from such a determination.'

Where the offending officers constitute, as here, a controlling majority of the stockholders, the action must necessarily be brought by the individual stockholder or stockholders who finds himself or themselves in the minority. Cook Stock. §645; Hawes *v.* Oakland, 104 U. S. 450.

It is the peculiar province of this court not only to right wrongs already committed, but to protect property from future injury and waste by withdrawing it from the reach of danger. In the case of a willful breach of trust it not only compels the guilty trustee to restore the trust property, but removes it from the possession and control of the custodian who has proved untrustworthy. There is nothing in the character of a trading corporation to prevent the application of this remedy. It is, after all, as between the stockholders, nothing more than a trading copartnership. Morawetz Corp. §3."

His expression of distrust of the persons in control of the company is pertinent here. He said (p. 200):

"In the case in hand it is impossible to leave the complainant's property interests in the control of the corporation without leaving it in the control of the two defendants Cord and Korb, and they have proved themselves wholly untrustworthy, so that if this were a case of partnership the court would dissolve it at once and divide the property. The exigency of the case demands the same remedy here, as far as it is necessary to ascertain and give complainant his share. This, as I have already shown, can be done without dissolving the corporation or seriously interfering with the conduct of its business."

This decree was reversed on appeal so far as it related to the appointment of a receiver (50 N. J. Eq., 756).

The Court of Appeals in *Sternberg* v. *Wolff*, 56 N. J. Eq., 389, took occasion to point out, however, that this reversal was "not on the ground of a want of power in the Court of Chancery to resort to the proposed mode of relief, but on the ground that in the judgment of this Court that power was in that instance improperly exercised" (p. 396).

In the Sternberg case a receiver was ordered, the stock interests and the directors being equally divided and the affairs of the company being deadlocked (p. 393).

And see the other New Jersey cases cited by the Vice-Chancellor in his conclusions on the law (p. 2160, l. 10; p. 2163, l. 8).

In reversing the decree in the *Fougeray case*, 50 N. J. Eq. 756, this Court, by Justice Garrison, said (at page 760):

> "The frauds of these defendants as directors of this corporation are all capable of adequate remedy and complete redress by the court within the principles of remedial and preventive equity. This being so, the court was not justified in a decree of first instance in stopping the business of a solvent company and taking possession of its affairs for the mere purpose of aiding the withdrawal of the injured party with a proportionate share of the corporate property and its increment, assuming such jurisdiction to exist in any case in the first instance. In case of a contumacious disregard of its decrees, a court of equity has and may put forth powers of a compulsatory and punitive character greatly in excess of those exercised by it in its ordinary remedial jurisdiction."

But in the case at bar the Court is helpless to put forth its powers of a compulsatory and punitive character. There is no one against whom the Court can act *in personam.* There are only three directors—Chase and two dummies—and every one of them resides in Connecticut. Robbins resides in Connecticut. The actions of Robbins and his crowd since the bill was filed, in eliminating the only New Jersey director, Mr. Engelke, and substituting non-resident directors, was evidently to prepare for just such a situation. And see what the Vice-Chancellor says at page 2130, line 13, &c.

Not only so, but the subsequent history of this case shows how sound the Vice-Chancellor's judgment was in making this appointment. The order was dated February 2, 1917, and filed the next day (p. 2176). The Vice-Chancellor filed his conclusions of facts on January 19, 1917 (p. 2137, l. 5).

The evidence shows that on January 17, 1917 (p. 553, l. 5), Captain Goodall testified that the Pacific Navigation Co., of which he was an officer, owed the defendant company the sum of $114,000 on account of its operating agreement, and that he expected to pay it that day (pp. 608 and 609). The report of the receiver shows (pp. 2131-2135) that on January 19, 1917, the very day the Vice-Chancellor filed his conclusions of fact, the money having meanwhile been paid to the defendant company in Connecticut, Robbins personally brought a writ of attachment for $10,000, and attached the fund (p. 2134, l. 30), and on February 2, 1917, the very day the order was signed appointing the receiver, the Pacific Company, which Robbins owns or controls, as the owner of the overdue fraudulent second mortgage bonds, issued its

attachments for $60,000 and $90,000 respectively, and tied up the same fund (pp. 2134 and 2135).

The Court properly appointed a statutory receiver.

In order to make this appointment the Court permitted the complainants to amend the bill, pursuant to leave which had previously been asked for and reserved at the trial. See order and amendment (pp. 64a and 64b).

This order has not been appealed from. It recites specifically (p. 64a, l. 13), "application having been made at the hearing and leave reserved by the complainants to amend their bill."

Counsel for the defendant will not deny that in the course of the arguments which were had at the trial between Court and counsel after the closing of the testimony, and before the making of the order appointing the equity receiver, the Court repeatedly stated that if the order of the Court, as embodied in the then proposed order appointing the receiver under the equity power of the Court (p. 2176, etc.), was not obeyed, he would turn the bill into a bill under the statute and appoint a receiver under the statute, and counsel for the complainants asked and received permission to amend the bill to that end if it should be necessary.

The order of amendment and the amendment as made were pursuant to that express determination of the Vice-Chancellor as announced to counsel in open court, and pursuant to leave applied for and reserved at the hearing, and was only made after the report of the receiver (p. 2131, &c.) showed that such an amendment and appointment were necessary.

The power of the Court to make such an amendment cannot be disputed.

See *Story's Equity Pleading,* sec. 884.
Daniel's Chanc. Pl. & Pr., vol 1, *p. 418.
Ogden v. *Thornton,* 30 N. J. Eq., 569.
Howell v. *Sebring,* 1 McCart., 84.
Midmer v. *Midmer's Exr.,* 26 N. J. Eq., 299.

And generally see *Corbin's Rules,* at pp. 172 and 173.

Indeed it is a question now whether the defendant has not placed itself outside of court, and precluded itself by its contempt from prosecuting this appeal at all.

It was the duty of the defendant to turn over to the receiver all of the assets of the company, including the cash in bank. Not only did it refuse to do this, but its treasurer, Chase, ran away when the receiver tried to call upon him for the purpose of obtaining the cash and other assets of the company, and Robbins, who the Vice-Chancellor holds, owns, dominates and controls the company, has flouted the authority of the Court, and placed every obstacle in the way of carrying out its decrees by causing the attachment suits to be brought in Connecticut, and by causing a foreclosure suit of the second mortgage bonds, which he holds through his Pacific Company, to be brought in California.

See *State* v. *Clerk of Bergen,* 25 N. J. Law, 209.

Wharton v. *Stoutenburg,* 39 N. J. Eq., 299, where this Court said (at page 302):

> "The objection that the decree complained of was made without notice to the defendant is not maintainable. He was in contempt of the court, and voluntarily beyond its jurisdiction. Notice given to him to appear and

execute its decree had been disregarded. Why should the court further seek him, when, by orderly, equitable methods, it was executing its own decree and giving the complainant the relief to which he had been shown, in the judgment of the court, to be entitled? It was not a new proceeding, but followed the former decree as consequently as process of execution in the ordinary course of procedure in a suit in equity, without showing special cause other than appeared in the case. Its decree had been condemned, and of its own motion, without notice, it could enforce it, within its equitable power by subsequent proceedings in the natrue of equivalent and substituted relief. If a court has power, when and while a defendant in an equity action is in contempt for disobeying its order, to refuse to hear him, as was held in Walker *v.* Walker, 82 N. Y. 260; Brinkley *v.* Brinkley, 47 N. Y. 40, and in many other cases, it will not require notice to be served on him to appear and be heard when it is proceeding regularly to enforce its decree against him."

See also

Lindsay v. *Lindsay* (Ill.), 99 N. E. 608, p. 609.

But assuming that the appeal will be heard, the order was properly made. A proper foundation for such an order was laid in the pleadings by the amendment. The facts showed beyond peradventure that the business of the company could not be conducted with safety to its creditors or the public, while the company remained in the hands of Robbins and his agents and dummies.

See *Bull* v. *International Power Co.*, 84 N. J. Eq. 6, and p. 209.

It is contended that the order was made without notice, citing *Shaw* v. *Standard Piano Co.*, 100 Atl., 167.

Whatever was said in that case against the propriety of appointing a receiver without notice was *dicta,* for in that case the defendant had appeared.

The defendant company was incorporated under the General Corporation Act of this State. A corporation incorporated under that act is subject to all the terms and provisions of that act, and has only such privileges as the State by the statute gives it. In this statute, the terms of which the defendant accepted by incorporating under it, it is provided that the Court of Chancery may on application, without notice, appoint a receiver. This is not depriving the defendant of any of its rights or due process of law because it allowed itself to come into existence under a charter from the State which was expressly subject to the liability that under conditions which came within the purview of the statute, application could be made to the court and a receiver appointed. There is no legal obstacle to the corporation waiving its rights in this respect, and it did waive them when it accepted a charter under a statute containing these provisions.

It appears, however, that the defendant company did have notice, and did appear in response to this notice, for an order to show cause was made, which was served upon it, as well as other parties in interest (p. 2184, l. 25, &c.); and the record shows specifically that the defendant appeared by its counsel on the return of that order. It objected *pro forma,* but stated no grounds (p. 2186, l. 2). It had every opportunity to state its grounds, if it cared to do so. It undoubtedly had its day in court on the order appointing the statutory receiver.

Furthermore this order was in no sense made without notice. It was made in the progress of a cause in which the parties had been before the court, and had been fully heard, and made on the evidence that was in, and was in no sense a summary proceeding, but an appointment made after full hearing.

It remains but briefly to allude to several subtle suggestions contained in the defendants' brief:

At page 3 (d) it is stated that the existing arrangements for the operation of the Harvard and Yale on the Pacific Coast by the Pacific Alaska Navigation Company has been approved by the stockholders without dissenting vote.

A stockholders' meeting was held in June, 1916. That, as the record shows, was the first meeting of the stockholders of the company of which personal notice was given to the minority stockholders not represented by the Robbins interests. This meeting, remember, was held after the bill was filed, and pending this suit.

Comment is made on the fact (p. 10) that Mr. Fernald, one of the complaining stockholders, said that he had nothing to suggest. Very evidently by that time there was nothing left to suggest, for the corporation was entirely in the hands of Robbins, and Mr. Fernald and the others were helpless. The brief, however, is silent as to the protest which Mr. Fernald made of the conduct of the company's affairs by the Robbins crowd. The protest is set forth in full (p. 501 of the record, ll. 10-25) and should be read in connection with what is said in the defendants' brief at page 10.

The brief argues (point 9, p. 39) that the business for which the company was incorporated is being conducted, and that the only tangible property of the company at the time Robbins acquired control (referred to in the brief as the "Chase management") consisted of the passenger steamers Yale and Harvard.

The brief overlooks entirely the fact that Robbins through his management, wiped out the valuable freight boats, wharves and good will, and with them every tangible asset in connection with the conduct of its business between the ports of New York and Boston, and banished the Harvard and Yale to the Pacific Coast; and not only that, but that the only business which the company could now carry on if it were returned to its dummy directors would be to receive the rent from the Harvard and Yale, and pay incidental expenses. (See what the Vice-Chancellor says at page 2168, line 30, etc.)

The brief suggests (p. 52) that "the action of the courts of this State has rendered the Yale and Harvard subject to a foreclosure of both the second mortgage and the first mortgage."

A foreclosure of the second mortgage has already been brought, as shown, by Robbins. It was partly in an effort to prevent that very thing that a receiver was appointed. See the Vice-Chancellor's conclusions of law (p. 2169, l. 37). The bugaboo of a foreclosure of the first mortgage was urged upon the Vice-Chancellor, and as an answer to it he issued an order to show cause, and caused notice to be sent to all of the creditors, including the first mortgage bondholders, and as appears from the statement in his opinion (p. 2169, l. 10), "a large proportion of the first mortgage bond-

holders approved the appointment of a receiver. None appeared opposing. The self interest of the bondholders would, I think, prevent them from foreclosing."

We respectfully urge that all of the decrees appealed from were properly entered and should be affirmed.

Respectfully submitted,

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C. 191	Formal request by Douglas Nicholson to Alfred C. Greening. (Not printed).....		194 1954
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C. 194—Certificate of incorporation of Eastern Steamship Corporation	216	1954
C. 195—Contract betweeu Douglas Nicholson and Edward T. Canfield, dated March 5, 1910	244	1965
C. 196—Certificate of incorporation of the Pacific Company	246	1967
C. 197—Protest of George A. Fernald & Company (Printed on page 501 of record)	501	1971
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D. 1—Letter, C. S. Miller, Pres., to Goodall, Jan. 7, 1910 (Printed on page 1599 of record)	1599	1973
D. 2—Minutes, special stockholders' meeting, Maine S. S. Co., Dec. 28, 1911 (Printed on page 1660 of record)	1661	1973
D. 3—Minutes, directors' meeting, Maine S. S. Co., May 5, 1911 (Printed on page 1662 of record)	1663	1973
D. 4—Minutes, directors' meeting, Maine S. S. Co., May 29, 1911. (Printed on page 1664 of record)	1664	1973
D. 5—Minutes, directors' meeting, Maine S. S. Co., Feb. 16, 1912. (Printed on page 1665 of record)	1665	1973
D. 6—Minutes, directors' meeting, Maine S. S. Co., July 19, 1912. (Printed on page 1665 of record)	1666	1973

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D. 7—Minutes, directors' meeting, Hartford & New York Transportation Co., Feb. 6, 1912.... (Printed on page 1667 of record)	1669	1973
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D. 14—Minutes, directors' meeting, New England Navigation Co., October 24, 1913..... (Printed on page 1681 of record)	1682	1975
D. 15—Minutes, directors' meeting, New England Navigation Co., Dec. 10, 1913..... (Printed on page 1682 of record)	1683	1975

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D. 16—Minutes, directors' meeting, N. Y. N. H. & H. R. R. Co., December 13, 1907..... (Printed on page 1684 of record)	1684	1975
D. 17—Minutes, directors' meeting, N. Y. N. H. & H. R. R. Co., September 18, 1908..... (Printed on page 1686 of record)	1686	1975
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D. 19—Minutes, directors' meeting, N. Y. N. H. & H. R. R. Co., Nov. 21, 1913..... (Printed on page 1688 of record)	1689	1975
D. 20—Minutes, directors' meeting, N. Y. N. H. & H. R. R. Co., March 25, 1914..... (Printed on page 1689 of record)	1690	1975
D. 21—Transcript, account of Maine S. S. Co. showing acquisition of Eastern Steamship Corporation securities. (Not printed)	1728	1976
D. 22—Directors' minute book No. 1, Metropolitan Steamship Co...	299	1976
D. 23—Directors' minute book No. 2, Metropolitan Steamship Co...	308	2053
D. 4—Report of Examination of Edward S. Hough, Marine Surveyor S. S. Harvard and Yale, February 8, 1913. (Not printed)..	318	2054
D. 6—Supplemental report of Edward S. Hough, dated Aug. 25, 1913. (Not printed)	319	2054

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D. 7—Further report of Edward S. Hough, February 19, 1914. (Not printed)	319	2054
D. 24—Further report of Edward S. Hough, April 8, 1914. (Not printed)	319	2055
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D. 29—Further report of Edward S. Hough, September 28, 1915. (Not printed)	320	2055
D. 30—Further report of Edward S. Hough, March 21, 1916. (Not printed)	320	2055
D. 31—Further report of Edward S. Hough, September 30, 1916. (Not printed)	320	2055
D. 32—Metropolitan Steamship Company, Stockholders' minute book	328	2056
D. 33—Recapitulation of income, deductions from income and net income or deficit, showing totals and average results per day, from November 15, 1909 (date of organization), to December 31, 1916	364	2093

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D. 34—Comparative statement of financial condition at November 15, 1909—October 10, 1910 (before issue of second mortgage bonds), December 15, 1915, and December 31, 1916.....	372	2094
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Amended Bill of Complaint.

Filed March 29, 1913.

In Chancery of New Jersey.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

Humbly complaining shows unto your Honor your oratrix Jennie R. Morse, a stockholder of Metropolitan Steamship Company, a corporation of the State of New Jersey, who brings this suit on behalf of herself and all other stockholders who may come in and contribute to the expense of this suit.

1. Metropolitan Steamship Company, a corporation of the State of New Jersey, (hereinafter referred to as the defendant company), was incorporated pursuant to the statute in such case made and provided, by recording in the office of the Clerk of Hudson County on the eighth day of November, nineteen hundred and nine, and by filing in the office of the Secretary of State of New Jersey on the same day, its certificate of incorporation, a copy of which said certificate is hereto annexed and made a part hereof, and marked Schedule A.

2. In and by said certificate of incorporation said defendant company was empowered and authorized to charter, lease, hire and operate steamships and all other kinds of boats and vessels, to maintain lines or service of steamships to carry and transport freight, passengers, and to do a general transportation business by water, all of which by reference to the said certifi-

cate of incorporation will more fully and at large appear.

3. At the time of the incorporation of the said defendant company and shortly thereafter your oratrix purchased shares of stock therein, and your oratrix is a stockholder of record upon the stock and transfer books of said defendant company of one hundred and thirty-seven shares of its capital stock, which stock your oratrix owns and is beneficially interested in, and your oratrix as such stockholder holds the duly executed certificates of said defendant company that she is such stockholder for said one hundred and thirty-seven shares. Your oratrix further shows that she acquired and became the owner of her said stock prior to and before the matters and things hereinafter complained of; and that all of the matters hereinafter complained of were committed while your oratrix was a stockholder of said defendant company as aforesaid, and without the knowledge of your oratrix and without any notice to her whatsoever. And your oratrix further shows that neither she nor any prior owner or holder of said one hundred and thirty-seven shares of stock of the said defendant company, or any part thereof, had knowledge or notice of or acquiesced in any of the matters and things of which complaint is hereinafter made.

4. Prior to the incorporation of the said defendant company, there had been in existence a corporation known as the Metropolitan Steamship Company, being a corporation of the State of Maine, (hereinafter referred to as the Maine Company # 1), which said company had been incorporated under the laws of the State of Maine on or about May first, Nineteen hundred

and five, and which said company had been authorized and empowered by its certificate of incorporation to carry on and conduct a steamship business for the transportation of passengers and freight, all of which more fully and at large appears by reference to its certificate of incorporation, a copy whereof is hereto annexed and made a part hereof, and marked Schedule B.

5. Said Maine Company # 1, following its incorporation, and for some time thereafter, operated a line of steamers for the transportation of freight and passengers by water for hire, between the cities of New York, in the State of New York, and Boston, in the State of Massachusetts. The fleet of steamers owned and operated by said Maine Company # 1 was as follows:

Two passenger steamers known respectively as the Yale and the Harvard, which said steamers cost upwards of one million two hundred and fifty thousand dollars each to build and equip and seven freight steamers, known respectively as the H. M. Whitney, the H. F. Dimock, the James Anderson, the James S. Whitney, the Herman Winter, the William S. McGowan, and the N. Hayden, which said freight steamers combined had a gross tonnage of eleven thousand and thirty-one tons, and a net tonnage of seven thousand four hundred and sixty-eight tons and two certain car floats known as Eastern and Western.

6. Said Maine Company # 1 operated said freight steamers in the last paragraph mentioned for the carriage of freight for hire by water between the cities of New York and Boston. Said passenger steamers Yale and Har-

vard for the carriage of passengers and freight by water for hire between the said cities of New York and Boston. Said passenger steamers Yale and Harvard were the first turbine steamboats used in interstate passenger commerce in New England, were exceptionally fast and efficient boats for the service in which they were engaged, and operated regularly on what was known as the outside line, carrying freight and passengers direct by water between the said cities of New York and Boston. By reason of their appointments and speed, said Yale and Harvard became a favorite line of travel for passengers between the cities of New York and Boston in either direction, so that passengers travelling between said cities, and especially in the summer months, preferred to travel by said steamers operated by said Maine Company # 1 in preference to travelling over transportation lines operated entirely by rail or partly by rail and partly by water between said cities of New York and Boston, by reason whereof a valuable and extensive goodwill was acquired in connection with the operation of the said steamers Yale and Harvard.

7. In addition to the said steamers hereinbefore mentioned, said Metropolitan Company # 1 owned a valuable wharf or dockage property known as Union Wharf Property in the City of Boston, and also an interest in and right to use a certain wharf known as the India Wharf, located in the City of Boston, which interest and right accrued to said Metropolitan Company # 1 by virtue of a long term lease executed between the Central Wharf & Wet Dock Company of Massachusetts, and the Massachusetts Company, which said Massachusetts

Company assigned said lease to said Maine Company # 1, and which lease by its terms and by the extension thereof runs until the first day of June, nineteen hundred and thirteen.

8. All of said property of the said Maine Company # 1 hereinabove referred to was mortgaged by the said Maine Company # 1 upon which mortgage said Maine Company # 1 defaulted in interest payments, in consequence whereof said mortgage was foreclosed in the United States Circuit Court for the district of Maine, and on the 8th day of October, nineteen hundred and nine, all of the property belonging to the said Maine Company # 1, including its passenger boats, freight boats, floats, wharves and dockage rights, good will and property of every kind and nature, and having a value of upwards of five million dollars, which had been covered by said mortgage, was sold pursuant to the decree of the said court, and was purchased by a certain committee headed by one John W. McKinnon, on behalf of certain creditors and others in interest of the said Maine Company # 1.

9. The said defendant company was organized by the said McKinnon and his associates in the interest of creditors and parties in interest of the said Maine Company # 1, for the purpose of taking over the assets of the said Maine Company # 1, and operating said steamships and boats for carriage of both passengers and freight, and for continuing the business which had theretofore been carried on by the said Maine Company # 1. Accordingly the said McKinnon and his associates caused to be transferred to the said defendant company all of the assets of every kind and nature previously belonging to Maine Company # 1, which had

been purchased at the said foreclosure sale, including the said passenger steamships Yale and Harvard, and the said freight steamships hereinbefore named, and the said Union Wharf at Boston, and the interest in the said India Wharf under the said lease, and all the other property and assets and good-will of the said Maine Company # 1, which property, including the good-will arising out of the operation of the Yale and Harvard, had in no wise been diminished or impaired by the said foreclosure proceedings, receivers of said Maine Company # 1, appointed by the Court, having continued the operation of the said steamships Yale and Harvard, as well as the said freight steamships ,and having continued and carried on the business of the said Maine Company # 1, without interruption.

10. Pursuant to said plan of reorganization of the business previously carried on by the said Maine Company # 1, the said defendant company caused a bond issue, to an amount not exceeding in principal three million dollars, secured by a mortgage or deed of trust to the American Trust Company, to be made on the fifteenth day of November, nineteen hundred and nine, which said mortgage or deed of trust covered the said passenger steamers Yale and Harvard, the said freight steamers hereinabove enumerated, the said Union Wharf Property, situated in the city of Boston, and the interest under the lease in the said India Wharf, in Boston, together with all the other property of every kind and nature belonging to said defendant company, and was given as security for said bond issue. In addition to said bond issue there were issued by said defendant company certain ten year six per cent. sinking fund gold notes to

the amount of one million five hundred thousand dollars, which notes were junior to the said mortgage bonds, and three million dollars of common stock of the par value of one hundred dollars each, being the full amount of the authoried capital stock of the said defendant company.

11. Of the said capital stock thus issued, One thousand dollars, par value, was issued for cash, and Two hundred ninety-nine thousand dollars par value was issued for property, which property for which said stock was issued was the same property heretofore referred to as formerly belonging to the said Maine Company # 1, and which was subjected to the prior liens of the said first mortgage bonds and the said ten year gold notes. The great majority of said capital stock on said reorganization, outside of the said stock of your oratrix, over which the said John W. McKinnon has no control, was retained or remained under the control of the said John W. McKinnon.

12. Following the incorporation of the said defendant company it continued to operate the said freight steamers and the said passenger steamers Yale and Harvard, which had previously been operated by the said Maine Company # 1, and by the said receivers, and the means of travel thus furnished by the said steamers Yale and Harvard, between the cities of New York and Boston, continued to be the favorite route of travel for passengers between said cities, in preference to lines of travel furnished by transportation companies operating routes either by all rail or by part water and part rail between said cities.

13. At the time of the incorporation of the said defendant company and for some time prior thereto and since all of the means of transportation by both rail and water or by part rail and part water between the cities of New York and Boston, for both passengers and freight, for hire, have been owned and controlled by the New York, New Haven & Hartford Railroad Company, a corporation, (hereinafter referred to as the Railroad Company). Said railroad company by ownership and long term leases owned and controlled all of the transportation by rail between said cities, and by stock ownership in various steamship lines operating on Long Island Sound and elsewhere, and engaged in the carriage of passengers and freight between the said cities of New York and Boston, owned and controlled all the transportation lines by water or by part water and part rail between the said cities, except the transportation line for the carriage of passengers and freight, owned, operated and controlled by the said defendant company, and previously owned and controlled by the said Maine Company #1, so that the transportation line conducted by the said defendant company, and previously conducted by the said Maine Company # 1, was the only competitor of the interests of the said Railroad Company in its business of transporting passengers and freight between the said cities of New York and Boston, and in its business of interstate commerce conducted and carried on by it between the said cities; and your orator shows and charges that by reason of the competition which the said defendant company and its predecessor company, Maine Company # 1, caused to the said Railroad Company,

said Railroad Company sought some scheme or method for the elimination of said competition, especially in the matter of the carriage of passengers by the all-water route between New York and Boston as carried on by the said defendant company and its said predecessor company by means of the said steamships Yale and Harvard.

14. Prior to the incorporation of the said defendant company, the said Railroad Company had carried on active negotiations in furtherance of its scheme for the elimination of said competition caused by the operation of the said steamers Yale and Harvard by the said Maine Company # 1, which said scheme and the negotiations carried on pursuant thereto had failed of consummation, and accordingly, immediately after the incorporation of the said defendant company and the continuance of the operation by it of the said steamship lines, the said Railroad Company, through its general counsel, one Edward D. Robin, and in pursuance of its scheme for the separation and elimination of said competition, entered into negotiations with the said John W. McKinnon, who controlled the great majority of the capital stock of the said defendant company as above set forth, and also a large amount of its said first mortgage bonds and gold notes, for the purpose of securing control of the said defendant company. And your oratrix shows the fact to be and charges that the said Railroad Company, through the agency of its said general counsel, did acquire and purchase, or cause to be acquired and purchased, the great majority of the shares of the capital stock of the said defendant company, and caused the same to be transferred in the name of and to certain persons and corporations then

and at all times since and now under the control of and dominated by the said Railroad Company, and your oratrix further shows and charges that said transfer of stock and control of the said defendant company was carried out and consummated without any notice thereof having been given to your oratrix, and without any knowledge on her part thereof, until long after the same had been completed.

15. Following the transfer of the said stock, interest and control of the said defendant company from the said McKinnon to the said Railroad Company, the said Railroad Company through its ownership or control of said stock, and without notice to your oratrix, caused the election of an entirely new set of officers and directors of said defendant company, as appears from the annual reports of said defendant company as filed in the office of the Secretary of State, copies whereof are hereto annexed and made a part hereof, and marked as follows: Annual report filed November 27th, 1909, marked Schedule C.; annual report filed December 17th, 1910, marked Schedule D.; annual report filed November 20th, 1911, marked Schedule E.; and annual report filed December 3rd, 1912, marked Schedule F. And your oratrix shows the fact to be and charges that the said directors named in the said three last annual reports, namely, Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes, were elected or caused to be elected by the said Railroad Company, at the behest of said Railroad Company and as the tools and instruments of said Railroad Company, and to carry out the wishes of the said Railroad Company in regard to the management of the said defendant company, and your

oratrix further shows the fact to be and charges that said Engelke, Martinsen and Hughes at the time of and since their election to the directorate of the said defendant company have been and still are the tools of said Railroad Company, and have acted and do act for and in its interests and at the behest of said Railroad Company, and have carried out and do carry out the wishes of the said Railroad Company in regard to the management of the said defendant company, and your oratrix further shows the fact to be and charges that the said last named directors have and do manage the said defendant company in the interests of the said Railroad Company, and contrary to the interests of the said defendant company, and of your oratrix and the stockholders of said defendant company.

16. Following the control of the capital stock of the said defendant company by the said Railroad Company and its interests, the said Railroad Company by its agents and particularly the said Edward D. Robin, its general counsel. caused to be incorporated under the laws of the State of Maine a corporation known as Metropolitan Steamship Company, (hereinafter referred to as Maine Company # 2), which said Maine Company # 2 was incorporated by certificate filed in the office of the Secretary of State of Maine on the second day of August, nineteen hundred and ten, copy whereof is annexed hereto and made a part hereof and marked Schedule G.

17. By said certificate of incorporation said Maine Company # 2 was authorized and empowered to own and operate steamship lines for the transportation of freight or passengers or both, by water and for hire, all of which more

fully and at large appears by reference to the said certificate of incorporation.

18. Following the obtaining of the control of a majority of the stock of the said defendant company by the said Railroad Company and its interests, and following the election of the said Engelke, Martinsen and Hughes as directors of the said defendant company, and following the said incorporation of the said Maine Company # 2, the said officers and directors of the said defendant company began to carry out the scheme of the said Railroad Company for the elimination of the competition which had theretofore existed between the said defendant company and the said Railroad Company and its various interests, and acting in the interest of the said Railroad Company and contrary to the interests of the said defendant company and of your oratrix, and at the instigation of the said Railroad Company, proceeded to denude the said defendant company of its assets, by causing the sale of the freight boats belonging to the said defendant company, namely, the H. M. Whitney, the H. F. Dimock, the James Anderson, the James S. Whitney, the Herman Winter. the William S. McGowan and the N. Hayden and by causing the sale of the said Union Wharf property in the city of Boston, and its interest by lease in the said India Wharf in Boston, to its agents acting in its behalf and at its behest, who immediately thereafter transferred said freight boats and said Union Wharf property. and the interest in the said India Wharf to the said Maine Company # 2, which said Maine Company # 2, as your oratrix shows the fact to be and charges, was organized in the interests of and by the said Railroad Company, and was

and still is absolutely controlled and dominated by it and your oratrix shows and charges the fact to be that all of said acts of said officers and directors of said defendant company were committed, done and performed without notice to your oratrix, and without her knowledge, and that your oratrix remained in entire ignorance thereof until long after said acts and doings of said officers and directors had been fully completed.

19. On or about September thirtieth, nineteen hundred and ten, the said Railroad Company, by its agents, and in pursuance of its scheme for the elimination of the competition which was caused by the operation of the said steamships Harvard and Yale, caused to be incorporated under the laws of New Jersey, a corporation known as Pacific Navigation Company, which company was empowered to operate steamships for the transportation of freight and passengers for hire in ocean waters, as well in the Pacific as the Atlantic Oceans, all of which more fully appears from a copy of its Certificate of Incorporation, and the amendments thereof, hereto attached and marked Schedule H. And your oratrix shows the fact to be and charges that the said corporation is irresponsible, and was and is a mere creature of the said Railroad Company, and at all times since its incorporation has been and still is dominated and controlled by said Railroad Company. Thereafter and on or about December twentieth, nineteen hundred and ten, the officers and directors of the said defendant company, acting in the interests of the said Railroad Company and contrary to the interests of the said defendant company, and of your oratrix, and at the instigation of the

said Railroad Company, and without notice to or knowledge of your oratrix, caused the said steamships Yale and Harvard to be leased to said corporation known as the Pacific Navigation Company, for service on the Pacific coast, for a rental and upon terms that were inadequate and unfair, and unduly favorable to the said Pacific Navigation Company, and a benefit to the said Railroad Company and its interests, and hostile to and in fraud of the rights and interests of the said defendant company and of your oratrix, all of which said Pacific Navigation Company well knew; and your oratrix shows the fact to be and charges that after the said steamships Yale and Harvard had been leased to the said Pacific Navigation Company, the service theretofore performed by them of transporting passengers and freight in interstate commerce by water between the cities of New York and Boston was discontinued.

20. The consideration named in the said lease to the said Pacific Navigation Company is inadequate and in fraud of the rights and interests of the defendant company and of your oratrix. Said Pacific Navigation Company is not required by the terms of the said lease to maintain or repair said steamships Yale and Harvard, and your oratrix shows the fact to be and charges that by the transfer of the said steamships Yale and Harvard to the Pacific coast, the said defendant company has been deprived of its most valuable assets, has lost and forfeited all right to control and operate the said steamships Yale and Harvard, and has been deprived of the valuable good-will which accompanied and inhered in the said steamships Yale and Harvard in their operation and use

for the carriage of passengers between the cities of New York and Boston; and your oratrix further shows the fact to be and charges that there are now no means of transportation between the cities of New York and Boston either by all rail or part rail and part water, except those owned and controlled by the said Railroad Company and its allied interests.

21. Since the transfer of the said freight boats, and the said wharves and the said passenger steamships, Yale and Harvard, as hereinabove set forth, the said defendant company has been deprived of all of its assets, property and good-will, and the business of the transportation of passengers and freight in interstate commerce, or otherwise, by water for hire, theretofore carried on by it, has been discontinued; and your oratrix is informed and believes, and therefore charges, that aside from the grossly inadequate rental paid by the said Pacific Navigation Company for the use of the said steamships, Yale and Harvard, all that now remains to said defendant company is its franchise.

22. The said defendant company has been denuded of its assets and the stock of your oratrix and the other stockholders has been made worthless by reason of the actions of the said Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes, the directors of the said defendant company, who have acted in the premises without the authority, knowledge or consent of the stockholders of said defendant company or of your oratrix. No meeting of the stockholders of said defendant company was held, nor did your oratrix receive notice of any such meeting, nor was any action taken by the stockholders of the said defendant company nor did your oratrix receive notice of any such action for

the denuding of the said defendant company of its assets and for the transferring of its property as hereinabove set forth, nor was the action of the said directors in denuding the said defendant company of its assets and disposing of its property as hereinabove set forth authorized by the action or vote of the stockholders, or by your oratrix, and your oratrix charges that even if a majority of the stockholders had voted to authorize the directors to denude the said defendant company of its assets and to sell out all of its property from which its profits were to be realized, and to abandon the business of the said defendant company, that such action would have been invalid as against your oratrix and in contravention of her rights as a stockholder of said defendant company; and your oratrix shows the fact to be and charges that the said actions of said directors have been unauthorized and invalid, and against the interests of the said defendant company, its creditors, stockholders and your oratrix; that their said actions have been actuated by fraud; that they constitute a gross abuse of their trust as directors and have not been bona fide or in good faith, and have been ultra vires the said defendant company. and have been contrary to and prohibited by an act of the United States, commonly known as the Sherman law, and being an act of the congress of the United States, entitled "An act to protect trade and commerce against unlawful restraints and monoplies," and that the said defendant company is now insolvent and is liable to heavy penalties under the said Sherman law for violation of the terms of that statute.

23. The various acts and doings of the said officers, and directors of the said defendant company in denuding said defendant company of its assets and transferring its assets at the behest of the said Railroad Company as set forth herein, and particularly in the eighteenth, nineteenth, twentieth and twenty-first paragraphs of this amended bill, were conducted and carried on secretly and without notice to or the knowledge of any of the stockholders of the said defendant company except the stockholders who are the said corporations and persons dominated and controlled by the said Railroad Company as in the fourteenth paragraph of this amended bill alleged. And your oratrix shows that neither she nor any prior owner or holder of any of the said one hundred and thirty-seven shares of stock of the said defendant company which your oratrix now holds and owns, had any knowledge or information of the various acts of the said officers and directors of the said defendant company in denuding said defendant company of its assets, and transferring its property as hereinabove set forth and complained of, and your oratrix acquired no knowledge or information thereof until shortly before the filing of the bill of complaint in this matter, when your oratrix having learned thereof for the first time, immediately consulted counsel and caused her said bill of complaint to be filed.

24. Your oratrix shows the fact to be and charges that the said Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes are all of the directors of the said defendant company, that they are among the persons against whom relief is sought by this bill of complaint, and that it would be useless, therefore, for your

oratrix to apply to them to bring this suit in the name of the said defendant company.

In tender consideration whereof, and forasmuch as your oratrix is remediless in the premises by the strict rules of the common law, and can only be adequately relieved in this court, where matters of this nature are properly cognizable and relievable.

To the end therefore that the said Metropolitan Steamship Company, a corporation of the State of New Jersey, Adolph L. Engelke, Rodney T. Martinsen, Thomas C. Hughes, and Pacific Navigation Company a corporation of the State of New Jersey, may each of them, but without oath, answer upon oath being hereby expressly waived, full, true and perfect answer make to all and singular the matters and things hereinbefore stated, and that as fully and particularly as if the same were here repeated and they and each of them thereunto interrogated, and that the lease or agreement entered into between the said Pacific Navigation Company and the said Metropolitan Steamship Company may be set aside, cancelled and made void, and the said Pacific Navigation Company be required by decree of this honorable court to return said steamships Harvard and Yale to said Metropolitan Steamship Company or its receiver, and that this honorable court may find and declare that the said Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes have not administered the trust imposed upon them as directors of the said Metropolitan Steamship Company, and that your honor. through a receiver, may take control of the said Metropolitan Steamship Company, and manage and direct its business, and that said receiver

may investigate the conditions of its affairs and make report to your honor, to the end that its business may be continued or wound up according to the condition in which its affairs shall be found, and that meanwhile the said Metropolitan Steamship Company, its officers, servants and agents, and each of them, may be enjoined and restrained from exercising any of the privileges or franchises granted to the said company, and from collecting or receiving any debts due to said company, and from paying out, selling, assigning or transferring any of the estate, money, fund, ships, boats, lands, tenements or effects of said company, and that your oratrix may have such other and further relief in the premises as the nature and circumstances of her case may require, and as may be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your oratrix the State's writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said Metropolitan Steamship Company, a corporation of the State of New Jersey, its officers, servants and agents, enjoining them and each of them from exercising any of the privileges or franchises granted to the said company, and from collecting or receiving any debts due to said company, and from paying out, selling, assigning or transferring any of the estate, money, fund, ships, boats, lands, tenements or effects of the said company, and also the State's writ of subpoena likewise issuing out of and under the seal of this honorable court, to be directed to the said Metropolitan Steamship Company, a corporation of the State of New Jersey, Adolph L. Engelke, Rodney T.

Martinsen, Thomas C. Hughes, and Pacific Navigation Company, a corporation of the State of New Jersey, therein and thereby commanding them and each of them to appear before this honorable court according to the law and course of this court, at a certain day and under a certain penalty therein to be expressed, then and there to answer the premises, and to stand to, abide by and perform such order or decree as to your honor shall seem meet.

And your oratrix, as in duty bound, will ever pray, etc.

M'CARTER & ENGLISH,
Solicitors for and of counsel with Complainant.

Schedule A.

CERTIFICATE OF INCORPORATION
OF
METROPOLITAN STEAMSHIP COMPANY.

We, the undersigned, in order to form a corporation under and pursuant to the provisions of the act of the legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

Paragraph I. The name of the corporation is METROPOLITAN STEAMSHIP COMPANY.

Paragraph II. The principal office of the corporation is located at No. 15 Exchange Place, Jersey City, New Jersey, and the Corporation Trust Company is designated as the registered

and statutory agent therein, in charge thereof, and upon whom process against the corporation may be served.

Paragraph III. The objects for which the corporation (hereinafter termed the "Company") is formed are:

(1) To construct, repair, purchase, charter, lease, hire, equip, and operate steamships, and all other kinds of boats or vessels to be propelled by steam, wind, or other motive power; to establish and maintain lines of service of steamships or other boats or vessels, and conduct such business; to do a general shipping and forwarding business; receiving, handling, shipping, forwarding and transferring passengers, animals and all goods, wares, merchandise, property and all classes of freight; to enter into contract for the carriage of mails, passengers, animals, goods, wares, merchandise, supplies and other property, and to charge and collect tolls and fares for the same, either by or over its own vessels or conveyances, or by or over the vessels and conveyances of others; to purchase, construct, own, lease, or otherwise acquire and operate wharves, docks, piers, yards, warehouses, works, structures or other buildings necessary or convenient for the above mentioned purposes or for the construction or repair of all kinds of steamboats or vessels, to manufacture purchase, acquire, and sell, lease and otherwise dispose of machinery and equipment of any and every kind and description, requisite or appropriate for use in and about steamships and other vessels.

(2) To purchase, lease or otherwise acquire, hold, own and dispose of the good-will, rights, property and assets of all kinds of any person,

firm, association or corporation doing a similar or other business, and to undertake the whole or any part of the liabilities of any such person, firm, association or corporation.

(3) To guarantee the payment of dividends on stock, and to indorse, or otherwise guarantee, the principal or interest of debentures, bonds, notes or other securities or obligations issued by any person, firm, association or corporation, and to guarantee the contracts of any such person, firm, or corporation whenever proper or necessary for the business of the corporation in the judgment of its directors, provided that authority for such guarantee be first given by resolution adopted by vote of at least two-thirds of the whole Board of Directors of this Company.

(4) To acquire by purchase or otherwise, and to hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds or other securities or evidences of indebtedness or obligations created or issued by, and any shares of capital stock of, any other corporation or corporations, association or associations, or government, of the State of New Jersey, or of any other State, District, Territory or Country, and any bonds or other evidences of indebtedness or obligations of any individuals, and while the owner thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote on any such stock.

(5) To aid in any lawful manner any corporation or association of which the bonds or other securities or evidences of indebtedness or stock are held by the Company and to do any and all lawful acts or things designed to protect, preserve, improve or enhance the value of

any such bonds, or other securities or evidences of indebtedness or stock.

(6) To aid in the formation and promotion of, and to assist financially, or otherwise, companies, syndicates, individuals, corporations, partnerships and associations, existing or to be created under the laws of the State of New Jersey, or any other State, Territory or Country, for the purpose of conducting and transacting business of any character or description whatsoever.

(7) To acquire, own, hold, convey, assign, pledge, mortgage, lease, rent and hire, or otherwise employ, deal in and dispose of, any and all such property, of all kinds, both real and personal, within or without the State of New Jersey, as may be necessary or convenient for the transaction of the business of the Company.

(8) To borrow money and to issue bonds and other evidences of indebtedness, and to secure the same by pledge, mortgage or deed of trust of the whole or any part of the property of the corporation, or otherwise.

(9) To acquire, own, use, sell, assign, lease, mortgage or otherwise dispose of Letters Patent of the United States, or of any foreign country, patents, patent rights, licenses, privileges, inventions, improvements and processes, trade-marks and trade-names, or pending applications therefor, relating to or useful in connection with any business of the Company.

(10) To enter into, make, perform and carry out contracts of every kind, for any lawful purpose, with any person, firm, corporation, association, municipality, state or government.

(11) To purchase, hold, sell, dispose of, pledge, issue and re-issue the shares of its capital stock, or any of its evidences of indebtedness, including obligations of every kind and nature.

(12) With a view to effectuate, directly or indirectly, the objects or purposes of the corporation, the corporation is authorized, in the discretion of the Board of Directors, from time to time, to carry on any other business, to any extent and in any manner not prohibited by the laws of the State of New Jersey, or where the corporation may seek to do business elsewhere, by local laws.

(13) The Company may conduct its business and exercise its powers out of this State and on any waters or seas, and in any of the States, Territories, Colonies or Dependencies of the United States, in the District of Columbia, and in any and all foreign countries and may have one or more offices therein, and hold, purchase, mortgage and convey real and personal property therein and out of this State.

(14) The business or purpose of the Company is from time to time and at any time to do one or more of the acts and things herein set forth, and to do any and all such other acts and things which may be lawful in connection with the objects of the Company.

The foregoing clauses shall be construed both as objects and powers. No recitation or declaration of specific or special objects or powers herein enumerated shall be deemed to be exclusive. The objects or powers specified shall be in no wise limited or restricted by reference to or inference from the terms of any other

clauses in this or any other paragraph of this Certificate of Incorporation, and it is hereby expressly declared that all other powers, now or hereafter permitted or granted under the laws of the State of New Jersey, or by the Laws of any other State, Territory or Country into which the corporation may go or seek to do business which a corporation incorporated under the Acts under which this corporation is incorporated may now or hereafter have, are hereby expressly included as if such other or general powers were herein set forth at length.

Nothing herein contained is to be construed to authorize hereby the formation of an insurance, safe-deposit or trust company, banking corporation or savings bank, or a corporation deemed to possess any of the powers prohibited by the laws of the State of New Jersey to corporations formed under the statutory provisions aforesaid.

Paragraph IV. The corporation is authorized to issue capital stock to the extent of Three million dollars ($3,000,000) divided into thirty thousand (30,000) shares of the par value of one hundred dollars ($100) each.

The amount of capital stock with which the corporation shall commence business is one thousand dollars ($1,000), divided into shares as aforesaid.

Paragraph V. The names and post-office addresses of the incorporators, and the number of shares subscribed for by each are as follows:

Names, Postoffice Addresses—	No. of Shares	Amt.
Thomas Achenbach, 324 Main Street, Hackensack, N. J.	7	$700
Jesse Myers, 25 Broad Street, New York City	2	200
Ernest J. Ellenwood, 25 Broad Street, New York City	1	100
Total	10	1000

Paragraph VI. The duration of the Company shall be perpetual.

Paragraph VII. In furtherance, and not in limitation of the powers conferred by statute, the Board of Directors are hereby expressly authorized:

(a) To hold their meetings, to have one or more offices and to keep the books of the Company within or (except as otherwise provided by statute) without the State of New Jersey, at such places as may be from time to time designated by them.

(b) To determine from time to time, whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or documents of the company except as conferred by statute or authorized by the Board of Directors, or by a resolution of the stockholders.

(c) To make, alter, amend and rescind the by-laws of the Company; to fix and to determine and to vary the amount to be reserved as working capital of the Company; to determine whether any, and if any what part of any accumulated profits shall be declared in dividends and paid to the stockholders, and to determine the time or times for the declaration and payment of dividends.

(d) To direct and to determine the use and disposition of any surplus or net profits over and above the capital stock paid in, and in its discretion, the Board of Directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its outstanding bonds other obligations (if any such bonds or obligations shall exist,) or in purchasing shares of its preferred or common capital stock, to such an extent and in such manner and upon such terms as the Board of Directors shall deem expedient. All shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the Company in the manner and to the extent authorized by law.

(e) The By-Laws may prescribe the number of Directors requisite to constitute a quorum at their meetings, and such number may be less than a majority of the whole Board.

(f) In case of any vacancy in the Board of Directors, arising through death, resignation, disqualification or other cause, the remaining Directors, by an affirmative vote of a majority thereof, though less than a quorum of the whole Board, may elect a successor, to hold office for the unexpired portion of the term of the Direc-

tor whose place shall be vacant and until the election of a successor.

(g) The Board of Directors shall choose a President and Vice-President, a Treasurer and a Secretary. Any two of such offices may be held by the same person, except that the President shall hold no other of such offices. The Board of Directors may appoint one or more additional Vice-Presidents, one or more Assistant Treasurers, and one or more Assistant Secretaries, and to the extent provided in the By-Laws or by the Board of Directors by resolution, from time to time, the persons so appointed respectively, shall have and may exercise all the powers of the President and of the Treasurer and Secretary, respectively.

(h) Any officer elected, chosen or appointed by the Board of Directors maybe removed at any time, with or without cause, by the affirmative vote of two-thirds of the whole Board of Directors. Any other officer or employee may be removed at any time, with or without cause, by the affirmative vote of a majority of the Board of Directors, or by any Committee or superior officer upon whom such power of removal may be conferred by the by-laws or by resolution of the Board of Directors.

(i) By a resolution passed by a majority vote of the whole Board, under suitable provisions of the By-Laws, the Board of Directors may designate three or more of their number to constitute an Executive Committee, which Committee, for the time being, as provided in said resolution or in the By-Laws, shall have and exercise any and all of the powers of the Board of Directors which may be lawfully delegated with respect to the management of the business and affairs of

the Company, and shall have the power to authorize the seal of the Company to be affixed to all the papers which may require it. From time to time, such resolution of the Board of Directors, or the By-Laws, may provide methods for the permanent or temporary filling of any vacancy in the Executive Committee, or in any other committee appointed by the Board.

(j) The Board of Directors, by an affirmative vote of a majority of the whole Board, may appoint any other committees. Such Committees shall have and shall exercise such powers as shall be conferred upon them respectively by the Board of Directors or be authorized by the by-laws.

(k) A Director of this Company shall not be disqualified by his office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the Company, in which any Director shall be in any way interested, be avoided on that account, or by reason of the fact that any firm of which such Director is a member or any corporation in which such Director is a shareholder or director, shall be interested therein; provided such contract shall have been adopted or authorized by a vote of at least a majority of the whole Board of Directors not interested in any way therein, or shall have been ratified and approved by the affirmative vote of holders of a majority in amount of the capital stock of the Company; nor shall any Director so contracting or so interested be liable to account to the Company for any profit realized by him from or through any such contract or arrange-

ment so adopted by the Board of Directors, or ratified and approved by the stockholders in the manner aforesaid, by reason of such Director holding such office or the fiduciary relation thereby established, provided such Director shall have disclosed the fact of his interest in such contract or arrangement at the meeting of the Directors or stockholders at which the contract or arrangement is so adopted and determined upon, or so ratified and approved by the stockholders.

(l) When authorized by the vote of at least two-thirds in amount of the capital stock of the Company outstanding at the time, or if such capital stock be divided into classes, then by vote of at least two-thirds in amount of each class of the capital stock of the Company outstanding at the time, at a special meeting of the stockholders called for that purpose, the Directors of the Company shall have the power to sell, assign, transfer, convey, or otherwise dispose of and deliver all property, assets, property rights and franchises of the Company as an entirety, upon such terms and conditions and for such consideration, whether in cash, bonds, stock or other property, as in their discretion the Directors may deem advisable.

Paragraph VIII. The Company reserves the right to amend, alter, change or repeal any provision contained in this certificate, in the manner now or hereafter prescribed by statute for the amendment of the certificate of incorporation and all the rights of stockholders are to be held and enjoyed subject to such rights of amend ment, alteration, change and repeal.

IN WITNESS WHEREOF, the undersigned have signed this certificate and affixed their seals thereto.

Name—Postoffice address—	Seal	No. of Shares.	Amt.
Thomas Achenbach, Hackensack, N. J.	(L.S.)	7	$700
Jesse Myers, 25 Broad Street, New York City	(L.S.)	2	200
Ernest J. Ellenwood, 25 Broad Street, New York City	(L.S.)	1	100

Witness to foregoing signatures:

GEO. H. COREY.

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

BE IT REMEMBERED, that on this 8th day of November, 1909, before me, George H. Corey, a commissioner residing in the said County of New York, and duly appointed by the Governor of the State of New Jersey for the taking of the acknowledgments and proofs of deeds of lands in that State, and duly commissioned and sworn, personally appeared THOMAS ACHENBACH, JESSE MYERS and ERNST J. ELLENWOOD, who I am satisfied are the persons named in and who executed the foregoing certificate of incorporation, and I having first made known to them and each of them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed.

(Seal) GEO. H. COREY,
Commissioner of Deeds for the State of New Jersey, Office No. 56 Wall Street, New York City.

Endorsed:

"RECEIVED in the Hudson Co., N. J., Clerk's Office, Nov. 8, A. D., 1909, and Recorded in Clerk's Record, No. — on page —.

JOHN ROTHERHAM,
Clerk."

"Filed and recorded Nov. 8, 1909.

S. D. Dickinson,
Secretary of State."

Schedule B.

STATE OF MAINE.

Certificate of Organization of a Corporation Under the General Law.

The undersigned, officers of a corporation organized at Portland, Maine, at a meeting of the signers of the articles of agreement therefor, duly called and held at No. 36 Exchange Street, in the City of Portland, State of Maine, on Saturday, the twenty-ninth day of April, A. D. 1905, hereby certify as follows:

The name of said corporation is Metropolitan Steamship Company.

The purposes of said corporation are to carry on the business of building, acquiring, owning, chartering, selling and otherwise disposing of, managing and operating steamships, barges, sailing vessels, and vessels and boats of all sorts used for, or in connection with the transportation by water, of persons and freight; to engage in the carriage of passengers or freight, or both, upon the high seas, or from a port in

this State to a foreign port or ports, or to a port or ports in other States; or upon any waters where this corporation may navigate; to make and enter into any and all legal contracts with reference to and in course of the prosecution of, the business herein described, with power to establish and collect tolls and fares for services performed in carrying on such business; to construct, acquire, own, lease, manage and operate wharves, docks, elevators, warehouses, storage houses and properties of a similar nature; to own, manage and operate ship building and construction plants, ship railways, and dry docks; to engage in the business of manufacturing, buying, selling and dealing in all kinds of machinery and all kinds of shipping equipment, supplies and materials; to hold, own and dispose of all kinds of property, both real and personal, including patents, patent rights and rights and properties, of a similar nature, and stocks, bonds, securities or evidence of indebtedness of other corporations established for purposes similar to or auxiliary to the purposes herein described; to sell or otherwise dispose of any or all of the property of the corporation; to borrow money and issue bonds and debentures required for the purposes of the corporation, and if deemed advisable to secure said bonds by mortgage, deed of trust, or otherwise; to acquire and undertake the whole or any part of the business, property, assets and liabilities of any person, firm or corporation engaged in a business similar to the business, or any branch of the business herein provided for; to do all or any part of the above things as principals, agents, contractors or otherwise, and by or through agents or otherwise, and either alone or

in conjunction with others; and to do any and all things incidental to or convenient for the prosecution of the purposes herein contained, or any of them, and not inconsistent with the laws of the State of Maine.

The amount of capital stock is Three Million Dollars ($3,000,000).

The amount of common stock is Three Million Dollars ($3,000,000).

The amount of capital stock already paid in is Five Hundred Dollars ($500).

The par value of the shares is $100.

The names and residences of the owners of said shares are as follows:

		No. of Shares.	
Names.	Residences.	Common.	Preferred.
C. A. Hight,	Boston Mass.	1	
E. C. Ramsdell,	do do	1	
L. L. Hight,	Portland, Maine	1	
H. P. Sweetser,	do do	1	
K. S. Harris,	do do	1	

Leaving unsubscribed for in the Treasury 29,995 shares.

Said corporation is located at Bath in the County of Sagadahoc.

The number of directors is five, and their names are C. A. Hight, E. C. Ramsdell, LeRoy L. Hight, H. P. Sweetser and K. S. Harris.

The name of the clerk is Frederic H. Low and his residence is Bath, Maine.

The undersigned, LeRoy L. Hight, is president; the undersigned, H. P. Sweetser, is treasurer, and the undersigned, LeRoy L. Hight, H. F. Sweetser and K. S. Harris, are a majority of the directors of said corporation.

Witness our hands this 29th day of April, A. D. 1905.

LeRoy L. Hight, *President.*
H. P. Sweetser, *Treasurer.*
LeRoy L. Hight,
H. P. Sweetser,
K. S. Harris,
Directors.

Portland, Me., April 29th, A. D. 1905.

Cumberland, *ss.*

Then personally appeared LeRoy L. Hight, H. P. Sweetser and K. S. Harris, and severally made oath to the foregoing certificate that the same is true.

Before me,

Arthur Chapman,
Justice of the Peace.

STATE OF MAINE.

Attorney General's Office,

April 29, A. D. 1905.

I hereby certify that I have examined the foregoing certificate, and the same is properly drawn and signed, and is conformable to the constitution and laws of the State.

Hannibal E. Hamlin,
Attorney General.

Schedule C.

ANNUAL REPORT

THE METROPOLITAN STEAMSHIP COMPANY.

The corporation above named, organized and registered under the laws of the State of New Jersey, does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto:

FIRST: The name of the corporation is METROPOLITAN STEAMSHIP COMPANY.

SECOND: The location of the registered office is No. 15 Exchange Place, Jersey City, New Jersey, and The Corporation Trust Company is the agent upon whom process against the corporation may be served.

THIRD: The character of the business is operation of a steamship line, and as otherwise specified in the certificate of incorporation.

FOURTH: The amount of the authorized capital stock is $3,000,000.

The amount actually issued and outstanding is $3,000,000, of which $1,000 par value was issued for cash and $2,999,000 par value was issued for property.

FIFTH: The names of all the directors and officers and the time when the term of office of each expires are as follows:

Names of Directors.	Expiration of Term.
Thomas Achenbach, New Jersey Director,	Nov. 18, 1910.

Jesse Myers, "
Ernest J. Ellenwood, "

Officers.	Expiration of Term.
President, Thomas Achenbach,	Nov. 18, 1910.
Vice President,	
Treasurer, Campbell Carrington,	"
Secretary, Campbell Carrington	"

SIXTH: The next annual meeting of the stockholders for the election of directors is appointed to be held on the third Friday of November, 1910.

SEVENTH: The name of the corporation has been at all times displayed at the entrance of its registered office in this State and the corporation has kept at its registered office in this State a transfer book, in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them, respectively, open at all times to the examination of the stockholders, as required by law.

The Post Office address of each of the foregoing directors and officers is No. 15 Exchange Place, Jersey City, New Jersey.

The Agent in New Jersey for the transfer of stock is The Corporation Trust Company, Jersey City, N. J.

IN WITNESS WHEREOF, this report is signed in behalf of the corporation by its President and Secretary of the said corporation, this 26th day of November, 1910.

[Corporate Seal.] THOMAS ACHENBACH,
President.
CAMPBELL CARRINGTON,
Secretary.

Endorsed:

"Filed Nov. 27, 1909.

S. D. DICKINSON,
Secretary of State."

Schedule D.

ANNUAL REPORT

THE METROPOLITAN STEAMSHIP COMPANY.

The corporation above named, organized and registered under the laws of the State of New Jersey, does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto:

FIRST: The name of the corporation is METROPOLITAN STEAMSHIP COMPANY.

SECOND: The location of the registered office is No. 15 Exchange Place, Jersey City, New Jersey, and The Corporation Trust Company is the agent upon whom process against the corporation may be served.

THIRD: The character of the business is Transportation, and as otherwise specified in the certificate of incorporation.

FOURTH: The amount of the authorized capital stock is $1,500,000. The amount actually issued and outstanding is $1,500,000.

FIFTH: The names of all the directors and officers and the time when the term of office of each expires are as follows:

Names of Directors.	Expiration of Term.
Adolf L. Engelke, New Jersey Director,	Nov. 18th, 1911.
Rodney T. Martinsen,	Nov. 18th, 1911.
Thomas C. Hughes,	Nov. 18th, 1911.

Officers.	Expiration of Term.
President, J. Turner Grieve, Nov. 18th, 1910.	holding over.
Vice President, none	
Treasurer, Douglas Nicholson	
Secretary, Nov. 18th, 1910.	

SIXTH: The next annual meeting of the stockholders for election of directors is appointed to be held on the Third Friday of November, 1911.

SEVENTH: The name of the corporation has been at all times displayed at the entrance of its registered office in this State, and the corporation has kept at its registered office in this State a transfer book, in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them, respectively, open at all times to the examination of the stockholders, as required by law.

The Post Office address of each of the foregoing directors and officers is No. 15 Exchange Place, Jersey City, New Jersey.

The Agent in New Jersey for the transfer of stock is The Corporation Trust Company, Jersey City, N. J.

In Witness Whereof, this report is signed in behalf of the corporation by the President and Treasurer of the said corporation, this 16th day of December, 1910.

J. Turner Grieve,
President.

Douglas Nicholson,
Treasurer and Secretary.

Endorsed:

"Filed Dec. 17, 1910.

S. D. Dickinson,
Secretary of State."

Schedule E.

ANNUAL REPORT

THE METROPOLITAN STEAMSHIP COMPANY.

The corporation above named, organized and registered under the laws of the State of New Jersey does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto:

First: The name of the corporation is METROPOLITAN STEAMSHIP COMPANY.

Second: The location of the registered office is No. 15 Exchange Place, Jersey City, New Jersey, and The Corporation Trust Company is

the agent upon whom process against the corporation may be served.

THIRD: The character of the business is the steamship business, and as otherwise specified in the certificate of incorporation.

FOURTH: The amount of the authorized capital stock is $1,500,000.00. The amount actually issued and outstanding is $1,500,000.00.

FIFTH: The names of all the directors and officers and the time when the term of office of each expires are as follows:

Names of Directors.	Expiration of Term.
Adolf L. Engelke, New Jersey Director,	November 15th, 1912.
Rodney T. Martinsen,	November 15th, 1912.
Thomas C. Hughes,	November 15th, 1912.

Officers.	Expiration of Term.
President, Thomas C. Hughes,	November 15th, 1912
Vice President, none.	
Treasurer, Rodney T. Martinsen,	November 15th, 1912.
Secretary, Rodney T. Martinsen,	November 15th, 1912.

SIXTH: The next annual meeting of the stockholders for the election of directors is appointed to be held on the fifteenth day of November, 1912.

SEVENTH: The name of the corporation has been at all times displayed at the entrance of its registered office in this State, and the corporation has kept at its registered office in this State a transfer book, in which the transfers of stock are made, and a stock book containing the

names and addresses of the stockholders and the number of shares held by them, respectively, open at all times to the examination of the stockholders, as required by law.

The Post Office address of each of the foregoing directors and officers is No. 15 Exchange Place, Jersey City, New Jersey.

The Agent in New Jersey for the transfer of stock is The Corporation Trust Company, Jersey City, N. J.

In Witness Whereof, this report is signed in behalf of the corporation by the President and Secretary of the said corporation, this 20th day of November, 1911.

Thomas C. Hughes,
President.

Rodney T. Martinsen,
Secretary.

Endorsed:

"Filed Dec. 1, 1911,

S. D. Dickinson,
Secretary of State."

Schedule F.

ANNUAL REPORT OF

METROPOLITAN STEAMSHIP COMPANY.

The corporation above named, organized and registered under the laws of the State of New Jersey does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto:

FIRST: The name of the corporation is Metropolitan Steamship Company.

SECOND: The location of the registered office is No. 15 Exchange Place, Jersey City, New Jersey, and The Corporation Trust Company is the agent upon whom process against the corporation may be served.

THIRD: The character of the business is steamship business, and as otherwise specified in the Certificate of Incorporation.

FOURTH: The amount of the authorized capital stock is $1,500,000. The amount actually issued and outstanding is $1,500,000.

FIFTH: The names of all the directors and officers and the time when the term of office of each expires are as follows:

Names of Directors.	Expiration of Term.
Adolf L. Engelke, New Jersey Director,	November 21, 1913.
Thomas C. Hughes,	November 21, 1913.
Rodney T. Martinsen,	November 21, 1913.

Officers.	Expiration of Term.
President, Thomas C. Hughes,	Nov. 21, 1913.
Vice President, Adolph L. Engelke,	Nov. 21, 1913.
Treasurer, Rodney T. Martinsen,	Nov. 21, 1913.
Secretary, Rodney T. Martinsen,	Nov. 21, 1913.

SIXTH: The next annual meeting of the stockholders for the election of directors is appointed to be held on the third Friday of November, 1913.

SEVENTH: The name of the corporation has been at all times displayed at the entrance of its registered office in this State, and the corporation has kept at its registered office in this State a transfer book, in which the transfers of stock are made, and the number of shares held by them respectively, open at all times to the examination of the stockholders, as required by law.

The post office address of each of the foregoing directors and officers is No. 15 Exchange Place, Jersey City, New Jersey.

The Agent in New Jersey for the transfer of stock is The Corporation Trust Company, Jersey City, N. J.

IN WITNESS WHEREOF, this report is signed in behalf of the corporation, this 16th day of Nov. 1913.

THOMAS C. HUGHES,
President.

RODNEY T. MARTINSEN,
Secretary.

Endorsed:

"Filed Dec. 3, 1912,

David S. Crater,
Secretary of State."

Schedule G.

STATE OF MAINE.

Certificate of Organization of a Corporation under the General Law.

The undersigned officers of a corporation organized at Portland at a meeting of the signers of the articles of agreement therefor, duly called and held at the office of Benjamin G. Ward, in the City of Portland on Tuesday the first day of March, A. D., 1910, hereby certify as follows:

The name of the corporation is Metropolitan Steamship Company.

The purposes of said corporation are:

First: The carriage of passengers or property, or both upon the high seas from the Port of New York in the State of New York to the Port of Boston in the State of Massachusetts and the carriage of freight or passengers, or both, upon any waters where this corporation may navigate and the construction, hiring, purchasing and operating of steamships and other vessels of any class; and the establishment and maintenance of lines or regular services of steamships or of other naval or maritime facilities and generally the carrying on of the business of shipowners; and the entering into of contracts for the carriage of mails, passengers, goods and merchandise, either by its own vessel or by other vessels and conveyances or by both; and the construction, purchasing, taking on lease or otherwise acquiring and working of any wharf, pier, dock, buildings or works capable of being advantageously used in connection with the business of the company as a carrying and shipping company; and in connection with any

of the purposes aforesaid the carrying on of the business of shipbuilders, engineers and manufacturers of machinery.

SECOND: To acquire and dispose of letters patent, patent rights and privileges, trade marks and trade names in any way relating to any of the purposes herein mentioned and operating thereunder and licensing others so to do.

THIRD: To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, territory or country, and while owners of such stock may exercise all the rights, powers and privileges of ownership including the right to vote thereon.

FOURTH: To issue preferred stock in such amounts and with such conditions of preference as may be voted by the stockholders.

FIFTH: To issue bonds in such amounts and on such conditions as may be voted by the stockholders.

SIXTH: To acquire, mortgage, lease, and otherwise dispose of such real and personal property as may be necessary or incidental to the business of the corporation.

The amount of capital stock is three million dollars.

The amount of common stock is three million dollars.

The amount of preferred stock is nothing.

The amount of capital stock already paid in is nothing.

The par value of the shares is one hundred dollars.

The names and residences of the owners of said shares are as follows:

Names—Residences—	No. of Shares. Common.	Preferred.
Joseph E. Chase, Portland, Me.	One	
Grover C. Richards, Portland, Me.	29,995	
John Johnson, Portland, Me.	One	
Harry L. Ryder, Portland, Me.	One	
E. M. Hinckley, Portland, Me.	One	
Wm. H. Greene, Portland, Me.	One	

Said corporation is located at Portland in the County of Cumberland. The number of directors is five, and their names are Joseph E. Chase, John Johnson, Harry L. Ryder, E. M. Hinckley, and William M. Greene.

The name of the Clerk is Benjamin G. Ward, and his residence is Portland, Maine.

The undersigned Joseph E. Chase is president; the undersigned Grover C. Richards is treasurer; and the undersigned Joseph E. Chase, John Johnson, Harry L. Ryder and William M. Greene are a majority of the directors of said corporation.

Witness our hands this first day of March, A. D., 1910.

JOSEPH E. CHASE, *President.*
GROVER C. RICHARDS, *Treasurer.*
HARRY L. RYDER,
WILLIAM M. GREENE,
JOSEPH E. CHASE,
JOHN JOHNSON,
Directors.

CUMBERLAND, *ss.* March 1, A. D., 1910.

Then personally appeared Joseph E. Chase, John Johnson, Harry L. Ryder and William M. Greene and Grover C. Richards and severally made oath to the foregoing certificate, that the same is true.

Before me,

BENJAMIN G. WARD,
Justice of the Peace.

STATE OF MAINE.

Attorney General's Office. March 1, A. D., 1910.

I hereby certify that I have examined the foregoing certificate, and the same is properly drawn and signed, and is conformable to the constitution and laws of the State.

CHARLES P. BARNES,
Asst. Attorney General.

STATE OF MAINE.

OFFICE OF SECRETARY OF STATE.

I hereby certify that the foregoing is a true copy from the records of this office.

In Testimony Whereof, I have caused the seal of the State to be hereunto affixed.

Given under my hand at Augusta, this tenth day of October in the year of our Lord, one thousand nine hundred and twelve and in the one hundred and thirty-seventh year of the Independence of the United States of America.

J. E. ALEXANDER,
[SEAL] Deputy Secretary of State.

Schedule H.

CERTIFICATE OF INCORPORATION OF THE PACIFIC NAVIGATION COMPANY.

This is to certify that we, MORTIMER E. JOINER, J. FRANK MCDAVITT, and JOHN E. WALKER, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

FIRST: The name of the corporation is PACIFIC NAVIGATION COMPANY.

SECOND: The location of the principal and registered office of the company is at No. 15 Exchange Street in Jersey City, in the State of New Jersey.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served is J. FRANK FINN, JR.

THIRD: The objects for which this corporation is formed are:

To build, construct, fit, equip, furnish, own, purchase, charter, use, operate and navigate boats, barges and vessels, of all classes and descriptions propelled by sail, steam, electricity or other power, and to use and operate the same in lawful business, trade, commerce or navigation upon the ocean, or upon any seas, estuaries, sounds, gulfs, harbors, bays, lakes, rivers, canals, creeks or other waterways, and to furnish

facilities for towing, lighterage and transportation upon such waters.

To furnish and supply facilities for and to engage in the business of carriage, transportation, storage and lading of freight, goods, wares, and merchandise, mails, property or passengers, upon such waters or waterways.

To construct buildings, bridges, machinery, ships, boats, engines, cars and other equipment, railroads, docks, slips, elevators water-works, machine shops, electrical works, viaducts, aqueducts, canals, and any other means of transportation, and to sell the same or otherwise dispose thereof or to maintain and operate the same.

To construct, lease, own, or sell transportation line or lines by land or water in any state or country, subject to the laws of such state or country, either directly or through ownership of stock of any corporation, and permit, construct, provide, acquire, carry out, maintain, improve, manage, develop, control, take on lease or agreement, sell, lease, license to work and dispose of the same, except that the company shall not maintain or operate any railroad or canal in the State of New Jersey, as aforesaid.

To engage in, permit, conduct and carry on the business of ship chandlers in all its branches, and to furnish and supply any and all articles necessary, useful or desirable in the navigation of ships, steamboats and other vessels, and provide supplies therefor.

To acquire and undertake the good will, property, rights, and assets and the liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock or bonds of the corporation or otherwise.

To enter into, make, perform and carry out contracts of every kind and for any lawful purpose with any person, firm, association or corporation.

To borrow or raise money without limit as to amount by the issue of or upon warrants, bonds, debentures, and other negotiable or transferable instruments, or otherwise.

To apply for, obtain, register, lease, purchase, or otherwise to acquire, and to hold, use, own, operate, and introduce, and to sell, assign or otherwise to dispose of, any trade-marks, trade-names, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere or otherwise, and to use, exercise develop, grant licenses in respect of, or otherwise to turn to account any such trade-marks, patents, licenses, processes and the like, or any such property or rights.

To purchase, hold and re-issue the shares of its capital stock.

To do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world.

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the corporation.

In general to carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and to have and to exercise all the powers conferred by the laws of

New Jersey upon corporations formed under the acts hereinbefore referred to.

The corporation shall also have power to conduct its business in all its branches, have one or more offices and unlimitedly to hold, purchase, mortgage and convey real and personal property in any state, territory or colony of the United States and in any foreign country or place.

FOURTH: The total authorized capital stock of this corporation is one hundred and twenty-five thousand ($125,000) dollars, divided into twelve hundred and fifty (1,250) shares of a par value of one hundred ($100) dollars each.

FIFTH: In furtherance, and not in limitation of the powers conferred by statute, the board of directors are expressly authorized:

To hold their meetings, to have one or more offices, and to keep the books of the company within or without the State of New Jersey, at such places as may be from time to time designated by them; but the company shall always keep at its principal and registered office in New Jersey a transfer book in which the transfers of stock can be made, entered and registered, and also a book containing the names and addresses of the stockholders and the number of shares held by them respectively, which shall be at all times during business hours open to the inspection of the stockholders in person.

To make, alter, amend and rescind the by-laws of the company, to fix the amount to be reserved as working capital, to fix the time for the declaration and payment of dividends; to authorize and cause to be executed mortgages and liens upon the real and personal property of the

company, provided always that a majority of the whole board concur therein.

SIXTH: The period of existence of this corporation is unlimited.

SEVENTH: The names and post office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of which ($1,000.00) is the amount of capital stock with which this company will commence business, are as follows:

Name.	Address	No. Shares
J. Frank McDavitt,	Pompton Lakes, N. J.	3
John E. Walker,	115 Broadway, N. Y. City	3
Mortimer E. Joiner,	115 Broadway, N. Y. City	4

IN WITNESS WHEREOF, we have hereunto set our hands and seals the 29th day of September, 1910.

MORTIMER E. JOINER (L. S.)
J. FRANK MCDAVITT (L. S.)
JOHN E. WALKER (L. S.)

Signed, and delivered in the presence of

L. E. MAHAN.

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

BE IT REMEMBERED that on this twenty-ninth day of September, in the year one thousand nine hundred and ten, before the undersigned personally appeared Mortimer E. Joiner, J. Frank McDavitt, John E. Walker, who I am satisfied

are the persons named in and who executed the foregoing certificate, and I having first made known to them, and each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

L. E. MAHAN,
Notary Public No. 225,
New York County.

[SEAL]

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss. No. 411.*

I, WILLIAM F. SCHNEIDER, clerk of the County of New York, and also clerk of the Supreme Court for the said county, the same being a Court of Record, DO HEREBY CERTIFY, That L. E. Mahan whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written was, at the time of taking such proof and acknowledgment a Notary Public in and for said county, duly commissioned and sworn, and authorized by the laws of said state to take acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and county, the 29th day of September, 1910.

WM. F. SCHNEIDER,
Clerk.

[SEAL]

Amended Bill of Complaint.—Schedule H.

Endorsed:

"Received in the Hudson Co., N. J., clerk's office, September 29, A. D. 1910, and recorded in Clerk's Record No. on page

JOHN F. CROSBY,
Clerk."

"Filed and Recorded Sept. 30, 1910.

S. D. DICKINSON,
Secretary of State."

AMENDED CERTIFICATE OF INCORPORATION OF THE PACIFIC NAVIGATION COMPANY.

This is to certify that we, MORTIMER E. JOINER, J. FRANK MCDAVITT and JOHN E. WALKER, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the legislature of the State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)", and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

FIRST: The name of the corporation is PACIFIC NAVIGATION COMPANY.

SECOND: The location of the principal and registered office of the company is at No. 15 Exchange street in Jersey City, in the State of New Jersey.

The name of the agent therein and in charge thereof upon whom process against this corporation may be served is J. Frank Finn, Jr.

THIRD: The objects for which this corporation is formed are:

To build, construct, fit, equip, furnish, own, purchase, charter, use, operate, and navigate boats, barges, and vessels of all classes and descriptions propelled by sail, steam, electricity or other power and to use and operate the same in lawful business, trade, commerce, or navigation upon the ocean, or upon any seas, estuaries, sounds, gulfs, harbors, bays, lakes, rivers, canals, creeks, or other waterways, and to furnish facilities for towing, lighterage and transportation upon such waters.

To furnish and supply facilities for and to engage in the business of carriage, transportation, storage and lading of freight, goods, wares and merchandise, mails, property or passengers upon such waters or waterways.

To construct buildings, bridges, machinery, ships, boats, engines, cars and other equipment, railroads, docks, slips, elevators, waterworks, machine-shops, electrical works, viaducts, aqueducts, canals, and any other means of transportation, and to sell the same or otherwise dispose thereof or to maintain and operate the same.

To construct, lease, own or sell transportation line or lines by land or water in any state or country, subject to the laws of such state or country, either directly or through ownership of stock of any corporation, and permit, construct, provide, acquire, carry out, maintain, improve, manage, develop, control, take on lease or agreement, sell, lease, let, license to work and

dispose of the same, except that the company shall not maintain or operate any railroad or canal in the State of New Jersey, as aforesaid.

To engage in, permit, conduct and carry on the business of ship chandlers in all its branches, and to furnish and supply any and all articles necessary, useful or desirable in the navigation of ships, steamboats and other vessels, and provide supplies therefor.

To acquire and undertake the good will, property, rights and assets and the liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock or bonds of the corporation or otherwise.

To enter into, make, perform and carry out contracts of every kind and for any lawful purpose with any person, firm, association or corporation.

To borrow or raise money without limit as to amount by the issue of or upon warrants, bonds, debentures, and other negotiable or transferable instruments, or otherwise.

To apply for, register, lease, purchase or otherwise to acquire, and to hold, use, own, operate and introduce, and to sell, assign or otherwise to dispose of any trade-marks, trade-names, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise to turn to account any such trade-marks, patents, licenses, processes and the like, or any such property or rights.

To purchase, hold and re-issue the shares of its capital stock.

To do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the corporation.

In general to carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and to have and to exercise all the powers conferred by the laws of New Jersey upon corporations formed under the acts hereinbefore referred to.

The corporation shall also have power to conduct its business in all its branches, have one or more offices and unlimitedly to hold, purchase, mortgage and convey real and personal property in any state, territory or colony of the United States and in any foreign country.

FOURTH: The total authorized capital stock of this corporation is seven hundred and fifty thousand ($750,000.00) dollars, divided into seventy-five hundred (7,500) shares of a par value of one hundred ($100.00) dollars each.

Of said stock twenty-five hundred (2,500) shares shall be preferred stock, and the balance, five thousand (5,000) shares shall be common stock.

The preferred stock may be issued as and when the board of directors shall determine and shall entitle the holders thereof to receive out of the net earnings, and the corporation shall be bound to pay a cumulative dividend at the rate of, but never exceeding eleven per centum per annum, payable before any dividend shall be

set apart or paid on the common stock; provided, however, that whenever a dividend is paid on the preferred stock the directors shall have power in their discretion to declare and pay a dividend for a like period on the common stock.

The holders of preferred stock shall, in case of liquidation or dissolution of the corporation, before any amount shall be paid to the holders of the general or common stock, be entitled to be paid the amount paid up on their shares and the dividends accumulated and unpaid thereon, but shall not participate in any surplus assets after paying of the whole of the paid-up capital.

Such preferred stock, at the discretion of the company shall be subject to redemption at one hundred twenty-five ($125) dollars per share on the first day of January, 1916, or on any dividend day thereafter.

FIFTH: In furtherance, and not in limitation of the powers conferred by statute, the board of directors are expressly authorized:

To hold their meetings, to have one or more offices, and to keep the books of the company within or without the State of New Jersey, at such places as may be from time to time designated by them; but the company shall always keep at its principal and registered office in New Jersey a transfer book in which the transfers of stock can be made, entered and registered, and also a book containing the names and addresses of the stockholders and the number of shares held by them respectively, which shall be at all times during business hours open to the inspection of the stockholders in person.

To make, alter, amend and rescind the by-laws of the company, to fix the amount to be re-

served as working capital, to fix the times for the declaration and payment of dividends, to authorize and cause to be executed mortgages and liens upon the real and personal property of the company, provided always, that a majority of the whole board concur therein.

SIXTH: The period of existence of this corporation is unlimited.

SEVENTH: The names and post office addresses of the incorporators, and the number of shares subscribed for by each, the aggregate of which ($1,000) is the amount of capital stock with which this company will commence business, are as follows:

Names.	Addresses.	No. Shares
J. Frank McDavitt,	Pompton Lakes, N. J.	3
John E. Walker,	115 Broadway, N. Y. City	3
Mortimer E. Joiner,	115 Broadway, N. Y. City	4

The undersigned being all the incorporators of the PACIFIC NAVIGATION COMPANY, a corporation organized under and in pursuance of an act of the legislature of the State of New Jersey entitled "An act concerning corporations (Revision of 1896)" the certificate of incorporation of which was duly recorded in the office of the clerk of Hudson County, New Jersey, on the 29th day of September, 1910, and duly filed in the office of the Secretary of State of New Jersey on the 30th day of September, 1910, no part of the capital stock of said corporation having been paid in, do hereby, pursuant to the provisions of Section 1 of an act of the legislature of the State of New Jersey, entitled "A

Supplement to an act entitled 'An Act concerning corporations (Revision of 1896)' approved April twenty-first, one thousand eight hundred and ninety-six," approved April 19, 1898, amend said certificate of incorporation so that the same shall read as hereinbefore set forth, and accordingly do hereunto set our hands and seals.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the 3rd day of October, 1910.

J. FRANK MCDAVITT (L. S.)
MORTIMER E. JOINER (L. S.)
JOHN E. WALKER (L. S.)

Signed and sealed in the presence of

L. E. MAHAN.

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

BE IT REMEMBERED that on the third day of October, 1910, before the undersigned personally appeared MORTIMER E. JOINER, J. FRANK MCDAVITT and JOHN E. WALKER, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them, and each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

L. E. MAHAN,
Notary Public No. 225,
New York County.

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

On this third day of October, 1910, before the undersigned personally appeared, MORTIMER E. JOINER, J. FRANK MCDAVITT and JOHN E. WALKER, who being by me severally duly sworn did severally depose and say they are all of the original incorporators of the Pacific Navigation Company as set forth in the foregoing certificate, and that no part of the capital stock of said Pacific Navigation Company has been paid in.

J. FRANK MCDAVITT
JOHN E. WALKER
MORTIMER E. JOINER

Subscribed and sworn to before
me at the City of New York,
the 3rd day of October, 1910.

L. E. MAHAN,
Notary Public No. 225
New York County.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss. No. 475.*

I, WILLIAM F. SCHNEIDER, clerk of the County of New York, and also clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That L. E. Mahan whose name is subscribed to the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment a Notary Public in and for said County, duly commissioned and sworn, and authorized by the laws of said State to take acknowledgements and proofs of deeds or conveyances for land, tenements or heredita-

ments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the fourth day of October, 1910.

[SEAL] WM. F. SCHNEIDER,
Clerk.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.* *No. 757.*

I, WILLIAM F. SCHNEIDER, clerk of the County of New York, and also clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That L. R. Mahan before whom the annexed deposition was taken was, at the time of taking the same, a Notary Public of New York, dwelling in said County, duly appointed and sworn, and authorized to administer oaths to be used in any Court in said State, and for general purposes; that I am well acquainted with the handwriting of said Notary, and that his signature thereto is genuine, as I verily believe.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 4th day of October, 1910.

[SEAL] WM. F. SCHNEIDER,
Clerk.

Endorsed:

"Received in the Hudson Co., N. J., Clerk's office 4th October, A. D., 1910, and recorded in Clerk Record No. on Page .

[SEAL] JOHN F. CROSBY,
Clerk."

"Filed and recorded
October 4, 1910,

S. D. Dickinson,
Secretary of State."

Order Amending Bill of Complaint.

Filed February 15, 1917.

All the evidence in this case having been presented by both sides, and it appearing that the business of the defendant, Metropolitan Steamship Company, has been and is being conducted at a great loss, and greatly prejudicial to the interests of its creditors and stockholders, and application having been made at the hearing and leave reserved to the complainants to amend their bill,

It is Ordered on this 15th day of February, 1917, on motion of McCarter & English, solicitors of the complainant, that the complaints have leave to amend the amended bill of complaint as follows: by adding on a new paragraph following paragraph 24, and reading as follows:

> "25. Your oratrix shows that by reason of the premises, the business of the defendant, the Metropolitan Steamship Company, has been and is being conducted at a great loss and greatly prejudicial to the creditors and stockholders, so that its business cannot be conducted with safety to the public and advantage of the stockholders."

And it is Further Ordered that the prayer of the said bill be amended by adding the following, at the top of page 19 after the words "effects of said company" and ahead of the words "and that your oratrix"

> "And that if need be a Receiver be appointed under the act entitled 'An Act Concerning Corporations (Revision of 1896), and

the acts amendatory thereof and supplemental thereto."

E. R. WALKER,
C.

Respectfully advised,

MERRITT LANE,
V. C.

Amendment to Amended Bill of Complaint.

Filed February 15, 1917.

Pursuant to the order of the Court made in this matter on the 15th day of February, 1917, the Clerk will amend the bill of complaint as follows:

By adding on a new paragraph following paragraph 24, and reading as follows:

"25. Your oratrix shows that by reason of the premises the business of the defendant Metropolitan Steamship Company has been and is being conducted at a great loss and greatly prejudicial to the creditors and stockholders, so that its business cannot be conducted with safety to the public and advantage of the stockholders."

And pursuant to the said order the clerk will further amend the prayer of the said bill by adding the following at the top of page 19, after the words, "effects of said company," and ahead of the words, "and that your oratrix";

"and that if need be a receiver be appointed under the Act entitled 'An Act Concerning Corporations (Revision of 1896)' and the acts amendatory thereof and supplemental thereto."

McCARTER & ENGLISH,
Solicitors of Complainants.

Answer of Defendants Metropolitan Steamship Company, Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes.

Filed June 17, 1913.

The joint and several answer of Metropolitan Steamship Company (hereinafter referred to as the defendant company), and of Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes (hereinafter referred to as the individual defendants), to the amended bill of complaint of Jennie R. Morse, complainant, or to so much thereof as the said defendants are advised it is material or necessary for them to answer.

1. The said defendants admit the allegations contained in paragraph 1 of the said amended bill of complaint.

2. In answer to the allegations contained in paragraph 2 of the said amended bill of complaint they pray leave to refer to the certificate of incorporation of the defendant company (a copy of which is annexed to the said amended bill of complaint), and to make the same a part of this answer as fully as if it were set forth at length herein.

3. They are informed and believe that the complainant did not purchase any shares of stock in the defendant company either at the time of its incorporation or shortly thereafter, and they leave her to make such proof with regard thereto as she may be able to do. They say that the complainant did not become a stockholder of record in the defendant company until March 15, 1911, when three shares of its stock were transferred into her name. They also say that she did not become the record

holder of any other shares in the defendant company until December 3, 1912, when one hundred and thirty-four of such shares were transferred into her name. They are informed and believe, and therefore charge the fact to be, that the complainant is not the owner of the said one hundred and thirty-seven shares, or any thereof, and that the same were transferred of record as hereinbefore stated in order that she might appear as the owner thereof, and that this suit is not brought by her in good faith or on her own behalf, and that she has no interest therein, or in the outcome thereof, but that on the contrary the same has been instituted by the person or persons who are the owner or owners of the said one hundred and thirty-seven shares of stock for purposes inimical to the best interests of the defendant company. They deny that the complainant either acquired or became the owner of the said one hundred and thirty-seven shares of stock, or any thereof, prior to the occurrence of the transactions complained of in her said amended bill of complaint, and they say that all of the transactions upon which the charges in the said amended bill of complaint contained are based occurred before the complainant became a record stockholder in the defendant company. They also deny that neither the complainant, or any prior owner or holder of the said one hundred and thirty-seven shares, had knowledge or notice of or acquiesced in any of the said transactions, and say that on the contrary the person or persons who were the owner or owners of all of the said shares at the time such transactions occurred then or shortly thereafter, and while still such owner or owners, knew and approved of all of such transactions, and acquiesced therein, and ratified the same,

and that the complainant is fully estopped from questioning or complaining of such transactions, or any thereof.

4. They admit the allegations of paragraph 4 of the said amended bill of complaint.

5. They admit that the freight and passenger steamers mentioned in paragraph 5 of the said amended bill of complaint were operated by Metropolitan Steamship Company of the State of Maine (being the company in the said bill of complaint mentioned as the Maine Company No. 1) between the cities of New York and Boston, as alleged in paragraph 6 thereof. Said steamers were not however so operated in the winter time, and these defendants deny that the passenger steamers Yale and Harvard, which were operated only during the season from May to October in each year, ever became a favorite line of travel for passengers between the cities of New York and Boston, in preference to the lines of transportation in operation between such cities entirely by rail, or partly by rail and partly by water. They are credibly informed and believe, and therefore charge the fact to be, that the steamers Yale and Harvard were operated by the said Maine Company No. 1 at a large and steady loss, and they deny that any valuable or extensive good-will, or a good-will of any value whatsoever, was acquired by the said Maine Company No. 1 as a result of its operation of said steamers. They also deny that the said passenger steamers were efficient or fitted for the service in which they were so used by the said Maine Company No. 1.

6. They admit the allegations contained in paragraph 7 of the said amended bill of complaint.

7. They admit the allegations contained in paragraph 8 of the said amended bill of complaint, save that they deny that the property and good will of the said Maine Company No. 1 sold under the foreclosure proceedings therein referred to had a value of upwards of $5,000,000. and save that they say that the said Maine Company No. 1 had no good will of any value at the time of such sale, because its business had been carried on at a large and steady loss, and that its property had steadily depreciated in value.

8. They deny that the defendant company was organized solely or especially for the purpose of operating the steamers and boats theretofore operated by the said Maine Company No. 1, or of continuing the business which had theretofore been carried on by that company, and they say that the objects and purposes for which the defendant company was incorporated and organized and its powers were then and still are as set forth in its said certificate of incorporation. They deny that the value of the property theretofore owned by the said Maine Company No. 1 was not diminished or such property impaired during the continuance of the said foreclosure proceedings, but on the contrary say that such property, and particularly the said steamers Yale and Harvard, depreciated greatly in value during the operations conducted by the receivers appointed in said foreclosure proceedings, and that the operation of such steamers by the said receivers did not result in the acquisition of a good will of any value whatsoever.

9. They have no knowledge of any plan of reorganization of the business carried on by the said Maine Company No. 1, but deny that securities or shares of stock were issued by the

defendant company as stated in paragraph 10 of the said amended bill of complaint. The ten year 6 per cent. sinking fund gold notes are non-interest bearing and were only issued to the amount of $1,427,291.78, and of the authorized capital stock of the defendant company only $1,500,000. has ever been issued, all of it being common stock.

10. The said amount of common stock of the defendant company was issued at the time of its organization and all thereof, with the exception of $1000 was issued for property theretofore owned by the said Maine Company No. 1, which property was at the time of the organization of the defendant company subjected to the liens of the said mortgage bonds and the said non-interest bearing ten year gold notes.

11. They deny all of the allegations of paragraph 12 of the said amended bill of complaint, save that they say that during the season of 1910 the said passenger steamers Yale and Harvard were operated under a contract made on the 5th day of March, 1910, between the defendant company and The Metropolitan Steamship Company (in the said amended bill of complaint and hereinafter referred to as the Maine Company No. 2).

12. They are credibly informed and believe that none of the allegations contained in paragraphs 13 and 14 of the said bill of complaint are true, and therefore deny each and every thereof.

13. They deny each and every allegation of paragraph 15 of the said amended bill of complaint.

14. They say that the said Maine Company No. 2 was incorporated on or about March 1,

1910, and not on August 2nd in said year. They are credibly informed and believe that the New York, New Haven & Hartford Railroad Company did not cause the said Maine Company No. 2 to be incorporated, and that it has never had the ownership or control of any of the stock thereof, or been interested therein, and they therefore deny the allegations of paragraph 16 of the said amended bill of complaint, save in so far as it states that a true copy of the certificate of incorporation of the said Maine Company No. 2 is annexed thereto.

15. They admit the allegations of paragraph 17 of the said amended bill of complaint.

16. They deny each and every allegation of paragraph 18 of the said amended bill of complaint, but they admit that in the month of February, 1910, the board of directors of the defendant company sold the freight steamers in the said paragraph mentioned, and in March, 1910, sold the equity of the defendant company in the Union Wharf property in Boston, and they say that such sales were made solely for the best interests of the defendant company and all of its stockholders, including the owner or owners of the one hundred and thirty-seven shares of its stock now standing on its books in the name of the complainant.

17. They admit that the defendant Pacific Navigation Company was incorporated under the laws of New Jersey on or about the 30th day of September, 1910, and that a true copy of its certificate of incorporation, with the amendments thereto, is attached to the said amended bill of complaint, and also that the service of the steamships Yale and Harvard between the cities of New York and Boston was discontinued

at the end of the 1910 season. They also admit that on or about the 10th day of October, 1910, the defendant company, by order of its then board of directors, entered into an indenture with the said Pacific Navigation Company for the operation of the said steamers Yale and Harvard between the ports of San Pedro and San Francisco, California, for the term of five years from the arrival of the said steamers at the said Port of San Pedro. But they deny that the said indenture was made at the instance or behest of the New York, New Haven & Hartford Railroad Company, or in pursuance of any scheme or for any purpose of the kind charged in the said amended bill of complaint, or for any purpose other than for the best interests of the defendant company, and all of its stockholders, including the owner or owners of the said one hundred and thirty-seven shares of stock. They also say that the consideration secured to the defendant company by said indenture is in all respects fair and adequate, and that the said indenture amply protects the interests and ownership of the defendant company in the said steamers and each of them. They also admit that after the making of the said indenture, the defendant company, by its then directors, sold and assigned its leasehold interest in the India Wharf of Boston in the said amended bill of complaint mentioned, but say that this transaction like all of the others upon which the charges of the complainant are based, was entered into and consummated solely for the best interests of the defendant company and all of its stockholders, and without the direct or indirect knowledge, request or participation of the said railroad company, and without any scheme or pur-

pose of the kind alleged in the said amended bill of complaint. Except in so far as herein is expressly admitted these defendants deny each and every allegation of paragraph 19 of such amended bill of complaint.

18. They deny each and every allegation of paragraphs 20, 21, 22 and 23 of the said amended bill of complaint.

19. They admit the allegations contained in paragraph 24 of the said amended bill of complaint.

In further answer to the said amended bill of complaint these defendants say as follows:

20. Each and every of the transactions upon which the charges contained in the said amended bill of complaint are based, including the discontinuance of the service of the said steamers between the cities of New York and Boston, the sale of the said freight vessels, the sale of the equity of the defendant company in the said Union Wharf, the making of the said indenture with the said Pacific Navigation Company, and the sale and assignment of the leasehold interest of the defendant company in the said India Wharf, were entered into and consummated by the officers and directors of the defendant company solely for the best interest of such company and of all of its stockholders, and neither directly or indirectly for the benefit or in the interest of or at the behest, connivance or direction of the said railroad company, which as these defendants are informed and believe neither has nor ever has had any direct or indirect interest in or control over the defendant company, or any of the officers and directors thereof. The said transactions, and each of them, were

entered into and conducted in accordance with the objects, purposes and powers for which the defendant company was and is incorporated and organized, and in pursuance of the powers duly conferred upon the board of directors thereof by its charter and by-laws. The said transactions and each of them were entered into and completed before the individual defendants, or any of them, became in any wise interested in or connected with the defendant company either as directors thereof or stockholders therein, or otherwise, and without participation therein or knowledge thereof by the said individual defendants, or any of them. The said transactions, and each of them, have resulted to the benefit of the defendant company, and all of its stockholders, and have materially improved the financial condition of the defendant company.

21. Due notice, in accordance with the by-laws of the defendant company, was given all of its stockholders of the annual meeting of the said company held on November 18, 1910, and at this meeting the owners of all of the defendant company's stock, with the exception of the owners of six hundred and thirty-seven shares thereof, including the one hundred and thirty-seven shares now standing in the name of the complainant, expressly ratified and confirmed the action of its officers and directors in selling the said freight steamers and the defendant company's equity in the Union Wharf property in Boston, and in executing the indenture made between the defendant company and the said Pacific Navigation Company under date of October 10, 1910. Similar notice was given to all of the stockholders of the defendant company of the annual meeting thereof held on November 7,

1911, and at this meeting all of the outstanding stock of the defendant company with the exception of the said six hundred and thirty-seven shares expressly ratified and confirmed the action of the directors of the defendant company in effecting a sale and assignment of its lease of the said India Wharf property. Since the said 18th day of November, 1910, the owner or owners of the said one hundred and thirty-seven shares have either expressly ratified or confirmed all of the said transactions or acquiesced therein, and they and also the complainant are now fully estopped by laches from complaining of any of the transactions upon which the charges in the said amended bill of complaint are based or from further prosecuting this suit.

And each of these defendants prays to be hence dismissed with his or its reasonable costs and charges in this cause most wrongfully sustained.

METROPOLITAN STEAMSHIP CO.,
By THOMAS C. HUGHES,
[SEAL] *President.*

Attest:

RODNEY T. MARTINSEN,
Secretary.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of Counsel with Defendants Metropolitan Steamship Company, Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes.

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

The answer of the defendant Metropolitan Steamship Company was taken before me this 17th day of June in the year of our Lord, nineteen hundred and thirteen, under the common seal of the said corporation as by its said seal thereto affixed appears.

JOHN WILLIAM BISHOP, JR.,
Master in Chancery of New Jersey.

Answer of Defendant Pacific Navigation Company.

Filed June 6, 1913.

The answer of Pacific Navigation Company, defendant, to the amended bill of complaint of Jennie R. Morse, complainant, or to so much thereof as this defendant is advised it is material or necessary for it to answer.

1. This defendant answering said amended bill says that it has no knowledge or information, save that derived from said bill, as to the incorporation of the defendant Metropolitan Steamship Company or as to the powers granted to it by its certificate of incorporation, or whether or not at the time of its incorporation and shortly thereafter, the complainant purchased shares of stock therein, or whether or not complainant is now a stockholder of record of said defendant Metropolitan Steamship Company, or whether or not complainant or any prior owner or holder of complainant's shares of stock had knowledge or notice of or acquired in any of the matters complained of in said amended bill, and therefore this defendant leaves complainant to make such proof of such matters as she may be advised.

2. Further answering this defendant says that it has no knowledge or information, save that derived from said bill, as to the incorporation of the Metropolitan Steamship Company (referred to in said bill as Maine Company No. 1) or as to the powers granted to it by its certificate of incorporation, or whether or not said Maine Company No. 1 operated a line of steamers

for the transportation of freight and passengers between New York and Boston, or whether or not the passenger steamers Yale and Harvard alleged in said amended bill to have been operated by said Maine Company No. 1 were the first turbine steamboats used in interstate passenger commerce in New England, or whether or not they were exceptionally fast and efficient boats for the service in which they were engaged, or whether or not said Yale and Harvard became a favorite line of travel for passengers between New York and Boston, and therefore this defendant leaves complainant to make such proof of such matters as she may be advised.

3. Further answering this defendant says that it has no knowledge or information, save that derived from said bill, as to whether or not said Maine Company No. 1 owned the Union Wharf property in Boston and also an interest in the India Wharf in said City, or whether or not all the property of the said Maine Company No. 1 was mortgaged, or whether or not said mortgage was foreclosed and all of said property sold under the decree in foreclosure and purchased by a certain committee headed by one John W. McKinnon, or whether or not the said defendant Metropolitan Steamship Company was organized by said McKinnon and his associates in the interests of creditors and parties in interest of said Maine Company No. 1 for the purpose of taking over the assets and continuing the business formerly carried on by said Maine Company No. 1, or whether or not the said McKinnon and his associates caused to be transferred to the said defendant Metropolitan Steamship Company, all the assets previously belonging to the Maine Company No. 1 or whether or not said property

had in any wise been diminished or impaired by the said foreclosure proceedings, or whether or not said defendant Metropolitan Steamship Company issued bonds to an amount not exceeding Three Million Dollars secured by a mortgage covering the said steamers Yale and Harvard and all the other property belonging to the said defendant Metropolitan Steamship Company, or whether or not the said Metropolitan Steamship Company issued gold notes and Three Million Dollars common stock as set forth in said amended bill, and therefore this defendant leaves complainant to make such proof of such matters as she may be advised.

4. Further answering this defendant says that it has no knowledge or information, save that derived from said bill, as to whether or not the great majority of the stock of said defendant Metropolitan Steamship Company was retained or remained under the control of the said McKinnon, or whether or not at the time of the incorporation of the said defendant Metropolitan Steamship Company and for some time prior thereto, all the means of transportation between New York and Boston were owned and controlled by the New York, New Haven & Hartford Railroad Company, which said Railroad Company, in pursuance of a scheme for the elimination of competition, entered into negotiations with the said McKinnon, and acquired the great majority of the shares of stock of the said defendant Metropolitan Steamship Company, and through its control of said stock caused the election of an entirely new set of officers and directors of said defendant Metropolitan Steamship Company, which directors so elected were the tools and instruments of said Railroad

Company, and therefore this defendant leaves complainant to make such proof of such matters as she may be advised.

5 Further answering this defendant says that it has no knowledge or information save that derived from said bill as to the incorporation of the Metropolitan Steamship Company (referred to in said bill as Maine Company No. 2) or as to the powers granted to it by its certificate of incorporation, or whether or not the officers and directors of the defendant Metropolitan Steamship Company, in furtherance of the alleged scheme of the said Railroad Company for the elimination of competition, caused the sale of the freight boats and of the wharf property formerly belonging to said defendant Metropolitan Steamship Company to the said Maine Company No. 2, or whether or not all of said acts of said officers and directors were committed, done and performed without notice to or knowledge of the complainant, or whether or not she remained in entire ignorance thereof until long after the same had been fully completed, and therefore this defendant leaves complainant to make such proof of such matters as she may be advised.

6. Further answering said amended bill, this defendant admits that this defendant was incorporated under the Laws of the State of New Jersey on or about September thirtieth, Nineteen hundred and ten and was empowered to operate steamboats for the transportation of freight and passengers for hire in the Pacific as well as in the Atlantic Ocean, but this defendant denies that it was incorporated by the said New York, New Haven & Hartford Railroad Company either in pursuance of said Railroad Company's alleged scheme for the elimination of competition

or to further any other purpose, and this defendant denies that it, the said Pacific Navigation Company, is irresponsible and it denies that it was or that it is a mere creature of the said Railroad Company as charged in the said amended bill, and it denies that since its incorporation it has been and still is dominated and controlled by the said Railroad Company as charged, and it denies that said steamboats Yale and Harvard were leased to this defendant for a rental and upon terms that were inadequate and unfair and unduly favorable to it and a benefit to the said Railroad Company and its interests and hostile to and in fraud of the rights and interests of the defendant Metropolitan Steamship Company and of the complainant, and it denies that said alleged lease was made without notice to or knowledge of the said complainant.

7. Further answering said amended bill this defendant denies that the consideration named in the said alleged lease is inadequate and in fraud of the rights and interests of the defendant Metropolitan Steamship Company and of the complainant, and it denies that by the terms of said alleged lease this defendant is not required to maintain and repair said steamboats Yale and Harvard.

8. Further answering this defendant says that it has no knowledge or information save that derived from said bill, as to whether or not there are now no means of transportation between New York and Boston except those owned and controlled by the said Railroad Company and its allied interests, or whether or not since the alleged transfer of the freight boats, wharf and passenger steamboats Yale and Harvard referred to in said amended bill, said de-

fendant Metropolitan Steamship Company has been deprived of all its assets, property and good will and the business of transportation of passengers and freight in interstate commerce, or whether or not the business of transportation of passengers and freight in interstate commerce or otherwise by water for hire heretofore carried on by it has been discontinued, or whether or not all that remains to the said defendant Metropolitan Steamship Company is its franchise, and therefore this defendant leaves complainant to make such proof of matters as she may be advised.

9. Further answering this defendant denies that the said defendant Metropolitan Steamship Company has been denuded of its assets and the stock of the complainant and the other stockholders been made worthless by reason of the actions of the directors of the Metropolitan Steamship Company and it denies that said directors have acted in the premises without the authority, knowledge or consent of the stockholders of said defendant Metropolitan Steamship Company or of the complainant, and it denies that the action of the said directors was unauthorized by the action or vote of the stockholders or of the complainant, and it denies that said actions of said directors constitute a gross abuse of their trust as directors and it denies that said actions were not *bona fide* or in good faith and it denies that the same have been *ultra vires* the said defendant Metropolitan Steamship Company, and it denies that the said actions have been contrary to and prohibited by the Act of the United States commonly known as the Sherman Law and it denies that the said defendant Metropolitan Steamship Com-

pany is now insolvent and is liable to heavy penalty under the said Sherman Law for violations of the terms of said statute.

10. Further answering this defendant denies that the various acts and doings of the officers and directors of the said defendant Metropolitan Steamship Company were conducted and carried on secretly and without notice to or knowledge of any of the stockholders of the said defendant company except such as are dominated and controlled by the said Railroad Company and this defendant denies that neither complainant nor any prior owner or holder of complainant's stock had knowledge or information of the various acts of the said officers and directors of the said defendant Metropolitan Steamship Company, and it denies that the complainant acquired no knowledge or information thereof until shortly before the filing of her said bill of complaint.

11. Further answering said amended bill, this defendant alleges that it, the said Pacific Navigation Company was incorporated for the purpose of doing business on the Pacific Coast; that it had no connection either with the New York, New Haven & Hartford Railroad Company or with the defendant Metropolitan Steamship Company; that the said alleged lease of said steamships Yale and Harvard was made in the usual course of business and in the proper exercise of power on the part of the directors of the said defendant Metropolitan Steamship Company so far as this defendant had reason to believe; that the same was made in good faith and for an adequate rental and on terms favorable to the complainant and other stockholders of the defendant

Metropolitan Steamship Company, and, among other things, by its terms required this defendant to maintain, preserve and keep said steamships in thorough working order and repair.

12. Further answering this defendant says it has no interest in this controversy except to maintain and uphold the validity and due execution of said alleged lease of said steamships Yale and Harvard and it denies all and all manner of unlawful acts whatsoever whereof it is in any wise by the amended bill of complaint charged, and this defendant, therefore, humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

ARTHUR LOVELL,
Solicitor for and of counsel with defendant, Pacific Navigation Company.

Supplemental Answer of Defendant Metropolitan Steamship Company.

Filed January 10, 1917.

The supplemental answer of Metropolitan Steamship Company, one of the defendants in the above entitled cause, filed in accordance with the leave heretofore granted in open court, to the amended bill of complaint of Jennie R. Morse, complainant.

This defendant, Metropolitan Steamship Company, affirming the truth of the various matters set forth in the joint and several answer heretofore filed to the said amended bill of complaint by it, Adolph L. Engelke, Rodney T. Martinsen and Thomas C. Hughes, now by way of supplement thereto shows as follows:

(1) Rodney T. Martinsen and Thomas C. Hughes resigned as directors of this defendant on June 6, 1914, and Warren D. Chase and Hugo R. Von Wessely were then elected in their place and stead, accepted such offices and entered upon the performance of the duties of such offices. At the annual meeting of its stockholders duly called for and held on the 20th day of November, 1914, in pursuance of the provisions of its by-laws, the said Warren D. Chase, Hugo R. Von Wessely, and the defendant Adolph L. Engelke, were duly elected as the directors of this defendant to serve until the next annual meeting of the stockholders thereof and until their successors should be elected and should qualify. The said individuals thereupon accepted such election and continued to perform the duties of such office until November 19, 1915.

(2) The said Adolph L. Engelke resigned as a director of this defendant on October 23, 1915, and Louis W. Chism was then elected in his place and stead, accepted such office and entered upon the performance of the duties of such office. At the next annual meeting of its stockholders duly called for and held on the last mentioned day, in pursuance of the provisions of its by-laws, the said Warren D. Chase, Hugo R. Von Wessely and Louis W. Chism were duly elected as the directors of this defendant to serve until the next annual meeting of its stockholders and until their successors should be elected and should qualify. The said last mentioned individuals thereupon accepted such election, entered upon the performance of the duties of their said office and continued to perform the duties thereof until November 17, 1916.

(3) At the next annual meeting of its stockholders duly called for and held on the last mentioned day the said Warren D. Chase, Hugo R. Von Wessely and Louis W. Chism were duly re-elected as the directors of this defendant, and have ever since then continued to perform the duties of such office.

(4) The indenture entered into by this defendant with the Pacific Navigation Company for the operation of the steamers Yale and Harvard for the term of 5 years from the arrival of the said steamers at the Port of San Pedro, mentioned in the 17th paragraph of the answer of this defendant heretofore filed herein, expired on the 16th day of December, 1915. Said indenture was and proved to be in all respects beneficial to this defendant and its stockholders. The provisions of said indenture with reference to the care, safety and upkeep

of the said steamers and each thereof, were at all times during the continuance of said indenture kept and performed by the said Pacific Navigation Company, and the full amount of the moneys which were to be paid by the said Pacific Navigation Company to this defendant under the said indenture have been paid to it. As a result of the making of the said indenture the indebtedness of this defendant at the time of the expiration thereof was, and now is, materially less than at the time of the making thereof.

(5) At the expiration of the said indenture Pacific Navigation Company was unwilling to renew the same. In order to derive the largest possible income from the operation of the said steamers this defendant thereupon accordingly entered into an arrangement with the said Pacific Navigation Company for the further operation of the said steamers on the Pacific Coast from month to month for the account of this defendant, by the terms of which the Pacific Navigation Company was to receive for its service and for furnishing facilities 11 per cent. of the gross earnings of such operation.

(6) The operation of the said steamers under the said last mentioned arrangement was not sufficiently profitable to this defendant to warrant the continuation thereof, if arrangements could be made for the operation thereof by which this defendant would be relieved from the expense and risk of such operation, and in lieu thereof would be secured the receipt of an income sufficient to defray its fixed charges and to enable it to further reduce its indebtedness.

(7) As a result thereof, this defendant thereupon undertook negotiations for the making of an operating agreement of the said last men-

tioned kind with steamship companies operating on the Pacific Coast, and concluded to make such an arrangement if the same could be secured and would meet with the approval of its stockholders. Before making such arrangement it therefore called a special meeting of its stockholders of which notice in accordance with the provisions of its by-laws was mailed to each stockholder of record at his post office address, as the same appears on the books of this defendant, and to each of its other stockholders by personal service thereof upon them respectively. Said special meeting was called for and begun at the principal office of this defendant on June 12, 1916. At said meeting 14,426 shares out of a total of 15,000 shares of the capital stock of this company were represented in person or by proxy, 54 of such shares being represented by George A. Fernald of the firm of George A. Fernald & Company, one of the intervening complainants in this suit. Jennie R. Morse, the original complainant herein, was also represented at such meeting by B. C. Higley, who stated that he had deemed it unnecessary to secure a proxy to represent her.

(8) At said time this defendant had been unable to finally negotiate any new arrangement of the kind proposed for the further operation of the said steamers on the Pacific Coast, and the stockholders present or represented at the said meeting were so advised. They were then also informed of the plans of this defendant with reference to such proposed arrangement for the continued operation of the said steamers on the Pacific Coast, provided the approval of its stockholders thereto could be obtained, and the stockholders were then requested to express their ap-

proval or disapproval of such policy or to make any suggestions with reference to the further operation of said steamers. No such suggestion was made by the said stockholders or any thereof at such meeting, or at any other time, but at said meeting the said George A. Fernald stated that he had no objection to the proposed action. The said meeting was accordingly adjourned from time to time until August 8, 1916, to permit of the continuance and completion of such negotiations. At an adjournment of such stockholders' meeting held on the last mentioned date there was submitted to this defendant's stockholders a plan for the further operation of the said steamers on the Pacific Coast by the Pacific-Alaska Navigation Company for the further period of at least 5 years. Said plan was then evidenced by a proposed indenture between this defendant and the said Pacific-Alaska Navigation Company, in and by which it was provided that this defendant should receive from the said last mentioned company the minimum sum of $30,000. per month during each month that said proposed indenture if made should continue in force. Said proposed indenture further provided for additional revenues to this defendant in certain contingencies and gave to the said Pacific-Alaska Navigation Company the option upon giving the notice therein prescribed to renew the same for the further period of 5 years after the first 5 years for which said indenture was proposed to be made. The stockholders of this defendant were informed that such indenture was to be executed and delivered only provided it was approved by a vote of at least two-thirds in interest of such stockholders. No objection to the making of the said inden-

ture was then made by any of such stockholders and more than two-thirds in interest thereof having at such adjourned meeting voted in favor of the execution and delivery of such indenture, the same was thereafter duly entered into by this defendant with the said Pacific-Alaska Navigation Company, to take effect September 1, 1916. For all of the terms and provisions of said indenture, this defendant begs leave to refer to the original or a duly certified copy thereof, with the same force and effect as if it were set forth at length herein.

(9) At no time has any stockholder of this defendant made any objection to said last mentioned indenture. At said meeting the said George A. Fernald expressed his approval of the proposed policy of the directors of this company of continuing the operation of said steamers on the Pacific Coast under a contract of the kind which had theretofore been entered into with the said Pacific Navigation Company, and since the holding of the said meeting the said George A. Fernald has expressed his approval of the making of the said last mentioned indenture after being advised of the contents thereof.

(10) The terms and provisions of the said last mentioned indenture to be kept and performed upon the part of the said Pacific-Alaska Navigation Company have at all times since such contract was made been kept and performed by it, and this defendant believes that in addition to the minimum monthly sum of $30,000. thereby secured to be paid to it by such company during the continuance of such indenture there will, under the terms thereof, accrue to and be received by it large additional sums.

(11) As a result of the making and performance of its said contract with the said Pacific Navigation Company and the making and performance up to this time of its said indenture with the Pacific-Alaska Navigation Company, the financial condition of this defendant has been greatly improved. Since the making of the said first mentioned contract its assets have increased in actual value, and its indebtedness has been reduced by approximately $795,000.

METROPOLITAN STEAMSHIP CO.,
By WARREN D. CHASE,
Treasurer and Secretary.

Attest:

WARREN D. CHASE,
Secretary.

LINDABURY, DEPEW & FAULKS,
Solicitors for and of Counsel with Defendant Metropolitan Steamship Co.

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

The answer of the defendant, Metropolitan Steamship Company, was taken before me this day of January in the year of our Lord one thousand nine hundred and seventeen, under the common seal of said corporation, as by its said seal thereto affixed appears.

WILLIAM T. DAY,
Master in Chancery of New Jersey.

Supplemental Answer of Defendants Rodney T. Martinsen and Thomas C. Hughes.

Filed January 10, 1917.

The joint and several supplemental answer of Rodney T. Martinsen and Thomas C. Hughes, two of the defendants in the above entitled cause, filed in accordance with the leave heretofore granted in open court to the amended bill of complaint of Jennie R. Morse, complainant.

These defendants Rodney T. Martinsen and Thomas C. Hughes, affirming the truth of the various matters set forth in the joint and several answer heretofore filed to the said amended bill of complaint by them, Metropolitan Steamship Company and Adolph L. Engelke, now by way of supplement thereto, show as follows:

1. Each of these defendants continued to be a director of the Metropolitan Steamship Company, one of the other defendants herein, until June 6, 1914, when they resigned and Warren D. Chase and Hugo Von Wessely were elected in their place and stead, accepted such offices and entered upon the performance of their duties. Since the said last mentioned date neither of these defendants has been a director, officer or stockholder or otherwise interested in said Metropolitan Steamship Company.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of counsel with Defendants Rodney T. Martinsen and Thomas C. Hughes.

Supplemental Answer of Defendant Adolph L. Engelke.

Filed January 10, 1917.

The supplemental answer of Adolph L. Engelke, one of the defendants in the above entitled cause, filed in accordance with the leave granted in open court, to the amended bill of complaint of Jennie R. Morse, complainant.

This defendant Adolph L. Engelke, affirming the truth of the various matters set forth in the joint and several answer heretofore filed to the said amended bill of complaint by him, Metropolitan Steamship Company, Rodney T. Martinsen and Thomas C. Hughes, now by way of supplement thereto shows as follows:

1. This defendant continued to be a director of the defendant, Metropolitan Steamship Company, until October 23, 1915, when he resigned and Louis W. Chism was elected in his place and stead, accepted said office, and entered upon the performance of the duties thereof. Since such last mentioned date this defendant has not been a director, officer or stockholder of or otherwise interested in said Metropolitan Steamship Company.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of counsel with Defendant Adolph L. Engelke.

Supplemental Answer of Pacific Navigation Company.

Filed January 2, 1917.

This defendant, Pacific Navigation Company, affirming the truth of the various matters set up in the answer heretofore filed by it in the above entitled cause and reiterating the same, now by way of supplement thereto says:

1. On or about December 15th, 1915, and upon the expiration of the lease mentioned in the amended bill of complaint and in its said answer, this defendant having fully performed and kept all of the covenants and agreements in said lease mentioned by it to be performed and kept, did surrender and redeliver the said vessels "Yale" and "Harvard" unto the said lessor, Metropolitan Steamship Company.

2. This defendant has not now and does not claim to have any right or interest in any of the matters now in question in this suit and disclaims all right, title and interest in any of the said matters; wherefore it prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

PITNEY, HARDIN & SKINNER,
Solicitors of Defendant, Pacific Navigation Company.

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

WALDRON M. WARD, being duly sworn, according to law, on his oath says that he is a member of the firm of Pitney, Hardin & Skinner, solicitors for said defendant, Pacific Navigation Company; that he has read the foregoing supplemental answer, and upon information verily believes the same to be true.

WALDRON M. WARD.

Sworn to and subscribed before me,
this 2nd day of January, A. D.,
1917.

BLAIR REILEY,
An Attorney at Law of New Jersey.

Petition of Elmer E. Newbert and Reuel T. Noyes to Be Admitted as Parties Complainant.

Filed January 20, 1917.

To the Honorable Chancellor of the State of New Jersey:

The petition of Elmer E. Newbert and Reuel J. Noyes, both of the City of Augusta, in the State of Maine, respectfully shows that said Newbert is the owner and holder for value of two certain promissory notes of the defendant company, numbered 519 and 526 respectively, and each for two thousand dollars ($2,000) and dated November 15, 1909, and of the following tenor, to wit:

"$2,000.

FOR VALUE RECEIVED, Metropolitan Steamship Company promises to pay to bearer, at the office of the Steamship Company, in the Borough of Manhattan, City of New York, Two thousand 00/100 Dollars ($2,000.) in gold coin of the United States of America of or equal to the present standard of weight and fineness, on the 15th day of November, in the year one thousand nine hundred and nineteen, without interest, the Steamship Company reserving the right to pay this note at any time after one year from the date hereof, upon giving thirty days' notice in writing of such intention.

This note shall pass by delivery and without endorsement, and until all of the notes of this series are paid no dividend shall be paid to the stockholders of the Steamship Company.

No recourse shall be had directly or indirectly for the payment of any part of the principal of this note to the personal liability of any incorporator or of any present stockholder, officer or director of the Steamship Company, whether

by virtue of any statute, or by the enforcement of any assessment or penalty or otherwise, all such liability being expressly waived and released by the acceptance of this note.

In Witness Whereof, Metropolitan Steamship Company has caused these presents to be signed by its president and its treasurer the 15th day of November, 1909.

METROPOLITAN STEAMSHIP COMPANY,

By THOMAS ACHENBACH,
President.

CAMPBELL CARRINGTON,
Treasurer.";

and that said Noyes is the owner and holder for value of eight certain promissory notes of the defendant company, numbered 527 to 534 inclusive, and each for one thousand dollars ($1,000.), and dated November 15, 1909, and of the following tenor, to wit:

"$1,000.

FOR VALUE RECEIVED, Metropolitan Steamship Company promises to pay to bearer, at the office of the Steamship Company, in the Borough of Manhattan, City of New York, One thousand 00/100 Dollars ($1,000.) in gold coin of the United States of America of or equal to the present standard of weight and fineness, on the 15th day of November, in the year one thousand nine hundred and nineteen, without interest, the Steamship Company reserving the right to pay this note at any time after one year from the date hereof, upon giving thirty days' notice in writing of such intention.

This note shall pass by delivery and without endorsement, and until all of the notes of this series are paid no dividend shall be paid to the stockholders of the Steamship Company.

No recourse shall be had directly or indirectly for the payment of any part of the principal of this note to the personal liability of any incorporator or of any present stockholder, officer or director of the Steamship Company, whether by virtue of any statute or by the enforcement of any assessment or penalty or otherwise, all such liability being expressly waived and released by the acceptance of this note.

In Witness Whereof, Metropolitan Steamship Company has caused these presents to be signed by its President and its Treasurer the 15th day of November, 1909.

METROPOLITAN STEAMSHIP COMPANY,

By THOMAS ACHENBACH,
President.

CAMPBELL CARRINGTON,
Treasurer."

That the bill in the above entitled cause was filed by the complainants, stockholders in the defendant company, and sets forth that because of fraud, mismanagement and breaches of trust on the part of the directors and majority stockholders, and parties in control of said corporation whereby its property has been and is being managed without fair consideration and purpose, they have been defrauded, (all of which these petitioners adopt and aver to be true), so that its solvency is threatened, and so that said corporation will be denuded of its property and unable, on the maturity thereof, to pay said promissory notes held by these petitioners, unless this Honorable Court grants the prayer of the complainants for the appointment of a receiver to take charge of and properly administer the affairs of said corporation under the direction of the Court.

Your petitioners, therefore, and forasmuch as they are remediless at law, humbly pray that an order may be made admitting them as parties complainant herein, and allowing them to appear and aid in the prosecution thereof, and take such other steps as they may be advised are necessary for the protection of their respective interests.

McCARTER & ENGLISH,
Solicitors of Petitioners.

Of Counsel.

STATE OF MAINE,
COUNTY OF KENNEBEC, } *ss.*

ELMER E. NEWBERT and REUEL J. NOYES being duly sworn on their respective oaths depose and say that they are the two petitioners named in the foregoing petition; that the deponent Newbert is the owner and holder for value of two certain promissory notes of the defendant company, numbered 519 and 526 respectively, each for $2,000 and dated November 15th, 1909, true copies of which are set forth in the foregoing petition; that the deponent Noyes is the owner and holder for value of eight certain promissory notes of the defendant company, numbered 527 to 534, inclusive, each for $1,000 and dated November 15th, 1909; that they have each read the foregoing petition and know the contents thereof, and that the matters and things therein contained are true.

ELMER E. NEWBERT,
REUEL J. NOYES.

Sworn to and subscribed before me this 3rd day of January, 1917.

(Seal) J. R. GOULD,
Notary Public.

In Chancery of New Jersey.

January 2, 1917.

Between

JENNIE R. MORSE,
Complainant,

and

METROPOLITAN STEAMSHIP COMPANY, *et als.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above entitled cause, at Chancery Chambers, Newark, New Jersey, on January 2, 1917, before Honorable Merritt Lane.

APPEARANCES.

Mr. Conover English (of McCarter and English) and Mr. Owen N. Brown (of the New York bar) and Mr. Frank M. Swacker (of the Washington, D. C., bar) for the complainants.

Mr. Frederick J. Faulks (of Lindabury, Depue & Faulks) for the Metropolitan Steamship Company and three other defendants.

Mr. John R. Hardin and Mr. Waldron M. Ward (of Pitney Hardin & Skinner) for the Pacific Navigation Company.

Mr. Faulks. As far as Mr. Swacker's association is concerned, it seems to me that there should be no participation in the case on his part. Mr. Swacker represented the government in the suit brought in New York, commonly known as the New Haven indictment, a suit

which was brought in the United States District Court for the southern district of New York. In that suit witnesses who were called for the defendant, the Metropolitan Steamship Company, at the time the bill was filed, were examined by Grand Juries, the records of the company were impounded there both before the Grand Jury and before the Court, and were examined by Mr. Swacker. Some of those records are still there. It seems to me that it would be improper, under the circumstances, for him to participate in the trial of this case, and have the benefit in so doing of the informati(which he obtained in that way. I think your Honor's discretion should be exercised by way of exclusion of any active participation by Mr. Swacker in the conduct of this case.

Mr. English. I have never known a case where another attorney of good standing was not, on motion, permitted to participate in the trial of a case in any court. As a matter of fact, Mr. Swacker has had familiarity with the proceedings here which would make him of much value to your Honor in the case.

The Court. The point I understand Mr. Faulks has made is this, that he ought not to be permitted for the benefit of a private client to use the information he has obtained acting for the government within the Grand Jury room, isn't that the point, Mr. Faulks?

Mr. Faulks. That is the point, your Honor; and a further point that as such representative of the government he has had power to, and has exercised that power to obtain information as to the details of the business.

The Court. Information that he could not have acquired if he did not have practically inquisitorial power of the Grand Jury.

Mr. English. He is simply here to participate in this case as counsel. I can't see any good ground in the objection made by Mr. Faulks to that.

The Court. I will review the situation when it arises.

Mr. English. It will arise right now, for I was going to ask your Honor's permission to permit Mr. Swacker to make application to your Honor on behalf of certain creditors of the defendant company to participate, or rather to be admitted as co-defendants in the action.

Mr. Faulks. I have no objection to that.

The Court. He may make that application. I will deal with the specific instance as it comes along. There is something in what Mr. Faulks says that he has acquired information practically because of his inquisitorial power in the Grand Jury; there is an element of unfairness about that.

Mr. English. We served counsel with copy and they have had papers before them for several days. The actual sworn copy is in the mail. I don't suppose counsel makes any objection to having the merits settled.

Mr. Swacker. May it please your Honor; The petition is on the part of the holders of some notes of the defendant corporation, the Metropolitan Steamship Company. These are two citizens of Maine who hold some ten-year non-interest bearing notes, due in 1919. They are not yet due by three years.

The Court. Of this Metropolitan Steamship Company?

Mr. Swacker. Yes; at the time of the reorganization which is set forth in the original petition, and the petitioners simply pray for leave to intervene to aid in the prosecution of the case with the complainant on the ground set forth in the complainant's bill, that the property of the corporation is being dissipated, is being denuded of its property, and there will be nothing left for them when the notes come due unless the Court appoints a receiver to take charge of its assets, and that the persons so situated may have security for their debt, even though the debt may not be yet done, may be able to apply for such relief.

Mr. Faulks. I desire to oppose this motion on behalf of the clients whom I represent. I desire in the first instance to call your Honor's attention to the nature of the pending suit, the one in which the intervention is sought. It is a bill filed by Jennie R. Morse as a stockholder of the Metropolitan Steamship Company, a corporation of the State of New Jersey, who brings this suit on behalf of herself and all of the stockholders who may come in and contribute to the expense of the suit. Now, the grounds upon which I base this opposition are as follows:

First, that this is merely a stockholder's suit; that it is brought in a representative capacity; third, that it is a suit of a corporation against the members of its board of directors and another corporation, namely, the Pacific Navigation Company. The bill alleges that the company is controlled by the individual defendants, who are all of its directors. "Your oratrix shows the fact to be and charges that the said Adolph

L. Engelke, Rodney P. Martinsen and Thomas C. Hughes are all of the directors of the said defendant company, that they are among the persons against whom relief is sought by this bill of complaint, and that it would be useless, therefore, for your oratrix to apply to them to bring this suit in the name of the said defendant company."

Your Honor will see that this suit is not a suit of any stockholder against the defendant corporation, but rather a suit of the defendant corporation itself against its board of directors, which the Court has allowed one of the stockholders to bring on behalf of the corporation. Now, the right that these gentlemen seek to exercise is the right of creditors of the corporation against the corporation itself; of course, it has not any place in a suit which a corporation itself is bringing against its directors.

The Court. The suit has a double aspect, hasn't it? It is a suit filed by stockholders for the appointment of a receiver to take control of the corporation and in the same suit asked for relief which that receiver acting for the corporation should obtain against the individual and other corporate defendants.

Mr. Faulks. No, I think not, your Honor. It is a suit, as I read the bill of complaint, alleging a breach of trust on the part of the directors of this company and saying that by reason of that breach and of its continuance these directors are not proper custodians of the company's property, and do not properly represent the interests of the stockholders; hence Mrs. Morse, or Miss Morse, asks that the control of the property of the company and the property itself be taken out of their hands

and placed in the hands of a receiver, just the same way as though they were hostile stockholders who could not elect a board of directors

The Court. That is one aspect of the suit?

Mr. Faulks. That is as far as the suit goes, I think. It is alleged that the company is insolvent, but that is a mere conclusion of law thrown in the bill of complaint to support the allegation as to the alleged breach of trust, that is, as a result of this breach of trust the company is insolvent. There is a prayer to that as an incidental matter if the receiver is appointed he should look into the condition of the company and determine whether or not its business could be wound up or further continued, but this is no statutory proceeding in any way, and it is a mere appeal to the equitable jurisdiction of the Court based upon an alleged breach of trust and that is the single aspect of the bill as I see it. I think, perhaps, I better state the points and then argue them as far as it may be necessary, for it seems to me that no argument can really be required in view of the allegation in the bill which I have already read.

Now, here is the situation. The gentlemen come in and present to your Honor a petition which is simply verified on information and belief in the most general sort of way, and therefore, there is really no proof before the Court that they are note holders of this company at all. As a matter of fact, we do not know, and have no way of knowing whether they are or not. Your Honor will observe that the notes which they pretend to hold, or claim to hold, are set forth in the petition verbatim, that they are, and that they were made in 1899 and ran for a period of ten years, and there-

fore will not be due for more than two years as yet. Now, we, of course, ought to have an opportunity to frame a pleading if the questions they seek to have a determined are to be raised; we ought to have a pleading from them, an opportunity to reply, and a decree which will amount to something when we get it.

Now, my position with reference to any one of the note holders in this company is that if he is dissatisfied with the management of the company and there is any equitable grounds upon which he is entitled to have that management interfered with, that management suspended, that management vested in the hands of the Court, rather than in the board of directors of the company he must, by an independent suit brought not in any representative capacity, but brought by himself alone and for his own benefit—that it must be brought in that way; that he has not any right to mix in a stockholder's matter or in a company's matter, if he has anything that entitles him to relief in a court of equity it is something that entitles him to the protection of this court in his individual capacity. Fifteen or two, in fact, of these creditors cannot bring a suit of this kind in any representative capacity.

The Court. I am not going to determine this at this moment.

Mr. Faulks. We think it is important to know whether they are in before any proceedings are taken. If they file an independent bill we certainly shall move to strike it out; if they are to be admitted here we think we ought to have the same opportunity before any proofs are taken to take action of that kind, and also if

they are to be admitted that we should be afforded an opportunity to take an appeal from that order. We think it is a matter of importance and one in which our clients are entitled to have the decision of this Court and of the Court of Appeals before the evidence is submitted to your Honor.

The Court. I shall not stay the process of this suit for the purpose of permitting an appeal even if I permitted the petitioners to intervene unless you showed me more strongly than you have yet how any defense which you might make to a suit, if these gentlemen are in, would be different from the defense that you are going to make anyhow. I have not heard you indicate any differences that the injection of these defendants into this suit would make. I can see where it might make a big difference but not so far as the note is concerned; I will not determine it today, I will determine it tomorrow. Meantime the case will proceed. I want to say now, Mr. English, I will not grant the application to intervene on this petition. Another petition will have to be sworn to. The oath is that the statements set forth in the petition are true to the best of their knowledge and belief. They may have no knowledge and belief.

Mr. English. We will get the paper in proper shape.

Mr. Ward. I ask leave to file a supplemental answer (proposed supplemental answer read). I think the answer does not set up any new relief in this case.

The interest of the Pacific Navigation Company has expired, and I offer to consent to a dismissal without costs. If Mr. English insists

upon keeping us before the Court we shall have to ask for costs and expensive transcript.

Mr. English. We have evidence here and will have more as to how much it will affect the Pacific Navigation Company. The things which the bill alleges it did do of course have material bearing upon any decree which may be made against the Metropolitan Steamship Company, I do not know as it has any bearing on the Pacific Navigation Company.

Mr. Hardin. Why should we have to stay here three weeks or longer about a matter which concerns expired interest. Does your Honor think it is fair that something should be done at this time with reference to the Pacific Navigation Company? Their interest has expired and this is going to be a long, tedious trial. As long as we are on record we can not expect to ignore the case. Counsel says he has so many judgments against us, the conditions of the lease are insufficient. It might enhance his rights in some way against these directors that he has made defendant in this main case, but it does not affect, so far as this case is concerned, the Pacific Navigation Company in any way. It does not seem right and fair, and is not equitable to keep us in attendance in a case of this character when no relief can be had for us at the finish.

The Court. It is a matter for Mr. English to determine. I can not compel counsel at this stage of the case to dismiss a defendant.

Mr. Faulks. If your Honor please, at various times throughout the taking of these depositions I entered objection to any testimony adduced for the purpose of showing that the New Haven Railroad Company was in any way

responsible for the action of the directors of the Metropolitan Steamship Company, No. 1, complained of in this suit, and there was a general understanding, had been, throughout the testimony that that objection should stand to all of the testimony. Now, the question will come up repeatedly and I would like to have that understanding renewed. Now, I would like to have your Honor just have in mind the ground upon which I based it so that I need not be interrupting the reading of the depositions constantly. One of the claims made in the bill of complaint is that what was done with the Yale and Harvard constituted a violation of the Sherman act and thereby the directors of the Metropolitan Steamship Company, of Maine, were guilty of a breach of trust because they had subjected the company to the danger of the imposition of large penalties under that act. Now, my point is simply this, that any evidence that there might be of any infraction of the Sherman act, of the Sherman law, would not be material or relevant or competent in the decision of this suit. There is no evidence, so far as we can see, that tends to connect the New Haven with the transactions complained of, but if there were and if there was clear and positive proof that the New Haven had controlled the directors of this company, and that there had been infraction of the Sherman law, our insistment is not to give it any weight in this case because under many well considered cases in the Circuit Court, and some in the United States Supreme Court, it is settled, I think, that the Sherman law creates whatever rights or wrongs or remedies may be created by that law and is exclusive and can not be enforced or given

weight in any proceeding except in a proceeding by the government itself in an equity suit on the Federal side of the Federal Court; and second, in an action at law by an alleged injured party for damages. I will be glad at any time to refer your Honor to cases. I presume you won't dispose of the matter now. I would like you to have it in mind that my objection stands to any evidence of that kind.

The Court. I am wondering just how far the federal courts go. I am familiar of course with the rule that state courts have no authority to enforce the Sherman act, and that the Sherman act can only be enforced in the way that you have suggested; but does the Supreme Court of the United States go so far as to say that a clear violation of the Sherman act cannot be considered as a breach of duty on the part of directors of a corporation for which any court of equity will give relief, not in the sense of enforcing the Sherman act.

Mr. Ward. Throughout the taking of the depositions I made various objections, all of which I desire to preserve. There are two which I wish to emphasize particularly, and one is this. A great part of the testimony taken deals with the acts of co-defendants or persons supposed to be in some connection; that evidence is not evidence against the Pacific Navigation Company unless the complainants prove the conspiracy alleged. Of course, the Court cannot rule upon that evidence until the close of the case. At that time, if there has been no conspiracy the evidence objected to should not be considered as evidence.

Another objection was made if we were parties in conspiracy that conspiracy was completely

New Jersey State Library

executed and completed in October, 1910, when the lease was made, and evidence of acts later in date than that time would not be evidence against us if there had not been any conspiracy, because our part in the supposed conspiracy had ceased.

The reading of the depositions taken in behalf of the complainants hereinafter printed was thereupon begun.

RECESS.

Mr. English. I offer in evidence the paper which was referred to in Mr. McGovern's testimony as C. 34 for identification, which is the lease between the defendant, Metropolitan Steamship Company and the defendant, Pacific Navigation Company, dated October 10, 1910, and I suppose it will be marked C. 34.

Mr. Faulks. No objection.

Mr. English. That is the one that has now expired by its terms?

Mr. Faulks. That is the lease that is said to have been improvident and reckless and contained no provision for the protection of the Metropolitan Steamship Company of New Jersey, or its stockholders. I am wondering if your Honor does not want to know now what it contains. I can tell you what the arrangement was. It provided that the Metropolitan Steamship Company should send the boats out there at its own expense and that,—strictly speaking, it is not a lease, it is an operating agreement,—five years from the time after arrival they should be operated from San Francisco to San Pedro, and I can't think what other city,—Oh, San Diego, at the sole expense of the Pacific Naviga-

tion Company. The only expense that the Metropolitan Steamship Company were at after the boats arrived there was that of keeping them insured; the wharves and ticket office and upkeep of the boats and everything else was to be at the expense of the Pacific Navigation Company. The rental during the first twelve months was to be slightly less than after that; the balance of the period was to be at a monthly rate not in excess of $33,000.

Mr. Ward. $197,500 a year for each boat.

Mr. Faulks. $392,000, I think it is, for two boats.

Mr. Ward. $395,000.

Mr. Faulks. Your Honor will see that the instrument is a very carefully drawn one and it is, in fact, protecting the interests of the Metropolitan Steamship Company very fully.

January 3, 1917.

Transcript of shorthand notes of testimony taken in the above entitled cause at Chancery Chambers, Newark, New Jersey, on January 3, 1917, before Hon. Merritt Lane.

Appearances as before stated.

The Court. I have considered with such care and thoroughness as the time I have had warranted me, permitted me, the questions whether or not I would make an order permitting the intervention of the two creditors who seek now to intervene as parties complainant; and I have come to the conclusion that upon the presentation of a properly verified petition I would make such an order.

The suit is one brought by a stockholder in a representative capacity for the purpose of protecting the assets of the corporation, the charge generally being that the directors fraudulently transferred practically the entire physical assets of the company, leaving the company nothing but its franchise to do business. It seems to be conceded that a creditor of a corporation might, in his own right, file a bill setting up precisely the same facts and asking for precisely the same relief. The result would be, were I to deny this application, that the two intervening creditors might, if they chose, file a bill word for word as the one now before this court. The answers filed by the defendants would be the same. I cannot conceive that they could be different. The issues would be the same and we would have two suits involving precisely the same issues to be tried. I have considered the case of *Iauch* v. *DeSocarras,* 56 N. J. Equity, 525. I do not think that it applies. There the suit was one to enforce a right personally to a specific creditor; that is, he had an execution and a lien. The object of his suit was to secure the payment of his judgment. This is not that kind of a suit. Any relief which is given to either the stockholder or the creditor must inure to the benefit of all stockholders and all creditors, and it seems to me that Vice-Chancellor Pitney himself in that case clearly pointed out the distinction. He says, "This last class of cases and rights and remedies of the parties * * * be administered by the Court for the benefit of all creditors of a certain debtor." I think that the case now before the Court is within that class. Again on page 531 the Vice-Chancellor said, "In all those cases in which the fund sought to be reached * * * but as claimants of the fund when once it is in

the hands of the Court." While it may be said that this suit is not for the purpose of bringing into the court a fund distributed among creditors yet it is for the purpose of preserving a fund, preserving a *corpus* for the equal benefit of both stockholders and creditors. That, generally, is the basis upon which I will make the order.

Mr. Faulks. Your Honor please, I understand that your decision is that on the presentation of a properly verified petition you will permit such intervention to be made? I said yesterday that if such an order was to be made we would like to take an appeal from it, and your Honor said that you would not allow a stay pending such an appeal. I think that we ought to be afforded an opportunity to make an application to the Court of Errors and Appeals for such a stay and the position here seems to be rather an anomalous one. Your Honor said that this application can be renewed and will be granted on a proper order. Now, in the meantime, these gentlemen are not in the case and there is no order from which we can appeal, and I want to renew my statement of yesterday that we intend to take an appeal from the order as soon as it is granted, and ask your Honor to afford us time in which to make an application to the Court of Errors and Appeals for a stay before the case proceeds. In other words, if we proceed today we do it with certain complainants, while if we proceed after the order is entered there will be additional complainants and I think that that is a situation which ought not to exist. We do not know, for instance, the preparation of our case. By the time it comes time to put it in we do not know whether they will be in the case or not. Then, as I pointed out to you yesterday, I think

we certainly ought to have an opportunity to deny any of the allegations which we may desire to deny in the intervening petition. It may be that the petitioners are not the holders of these notes at all. We have had no opportunity to examine into that question. We were served on Thursday or Friday with this petition and I think we ought to be afforded an opportunity. That gives us no opportunity to raise any issue at all, reasonable opportunity, with reference to the application of the petition. I ask now that we be afforded these rights, first, an opportunity to make our application to the Court of Appeals for a stay, and, second, an opportunity to answer the allegations of the petitioners intervention when a proper one is presented, and before the case proceeds, if it is proceeded with. I do not see when we are ever going to get a chance to contest an issue and a chance to contest the validity of the claims of these interveners unless we have it now. As I said to your Honor yesterday, unless there is some issue framed by a proper pleading the decree in this case will not be a binding one as to them. I think we are fast being driven into a condition which is unfair to the defendant. For these reasons I make this double application.

The Court. The order will be made, will provide that the intervening complainants shall become bound by all of the proceedings that have taken place in this case up to the present time. They there adopt the allegations made in the bill of complaint and will go no further than that and the defendant, of course, will have an opportunity to meet the only new allegation which I will permit to be contained in the peti-

tion, which will be the setting up of the debts of the creditors, they will be given every reasonable opportunity to meet.

In respect to application for a stay as made yesterday, I stated yesterday that I would not entertain it, and I have not changed my mind upon that. As I see the situation there is no issue injected into the case by permitting the creditors to intervene, except the single issue as to whether or not they are creditors; otherwise the suit is in precisely the same situation as it was before application was made to admit them as complainants. I asked counsel to point out to me yesterday how or in what way his line of defense would be changed. Counsel was unable to, or in any event, did not point out how the fact that these creditors were permitted to intervene would alter the conduct of his defense, and in the absence of showing actual harm would come to the defendant, I am not willing to grant any stay. If the Court of Appeals does not agree with me that these intervening creditors should have been permitted to intervene this suit must proceed in any event in precisely the same way.

Mr. Faulks. Your Honor understands I am not renewing my application to you for a stay. I do not mean to do that. I assume that you had decided that matter once for all yesterday when you said you would not grant a stay. My application with reference to a stay this morning is that when the order is entered, if it be entered, that we be afforded an opportunity then to make an application to the Court of Appeals for a stay pending the present proceeding of the case.

There is just one other thing I want to say, and that is something that your Honor said in the decision you rendered a moment ago, which was to the effect that I conceded yesterday that if a bill was filed by the creditors as an independent suit, that some answer would have to be filed, and bill was filed in the same form. That may be, but I also said and believe that a demurrer would be interposed and should be sustained to that suit.

The Court. Then you have changed your mind since yesterday?

Mr. Faulks. I have not, your Honor.

The Court. Yesterday when you were on your feet I especially asked you whether or not if a bill was filed by one of these creditors in precisely the same form as that now before the Court, whether such a bill would be good as against a demurrer or motion to strike out, and you said that it would be.

Mr. Faulks. I have no recollection of having said that; I do not see how I could have, and I have rather a distinct recollection of having said the contrary in fact, because the situation of these complainants is, as I conceive, entirely different from that of the stockholders, and I meant to say and think I did say that if such a bill should be filed we would make a motion to strike it out or whatever would have been equivalent to the old demurrer. I do not see, do not understand, do not believe that these complainants have any right of action at this time against the company, and if we are afforded an opportunity by any sort of pleading; we have had in mind to do it ever since this application was made, and if I led your Honor to believe

yesterday that the contrary was the fact, I will say that I regret it. I did not mean to do it.

The Court. If a motion to strike out were made I should follow the rule and under the rule I should postpone the determination until the conclusion of the final hearing, for the reason that the testimony has got to be gone through with in any event upon the suit of the stockholders, and it seems to me that if these creditors have any rights at all it is much better for both sides and for the Court to get them into court and have the decree which will be made covering every one interested in this corporation, creditors and stockholders alike. I should not entertain an application to postpone the proceeding of this cause and afford an opportunity for an application to be made to the Court of Appeals for a stay pending the determination of this particular matter.

I might also say that this determination of mine is merely an expression of my opinion made up between last night and this morning. I have not had an opportunity to look at the cases, other than the cases referred to by counsel. At any time during the course of the proceedings a motion may be made to vacate this order.

Mr. Faulks. I do not know at what time the order will be presented to your Honor. We of course, would like to be heard with reference to its form, and if at that time your Honor will hear further argument with reference to the non-granting of the order we would like to have an opportunity to do that.

January 4, 1917.

Continuation of proceedings, pursuant to adjournment, on the 4th of January, 1917, at the place and in the presence of the parties and the court as before.

The Court. The matter we had before us yesterday was the question of the admissibility of a letter of Mr. Allen, page 72 of the exhibits. Mr. English, I do not think at this time that that letter is admissible.

Mr. English. Will your honor rule it out now.

The Court. I will permit it to be marked and retain its mark as exhibit for identification as a letter that was received at one time, or at the time stated by the trust company.

Mr. Faulks. That really applies to 59 and 60; it applies to 58, 59 and 60; they all go together.

The Court. Exhibit C. 65, page 83 of the exhibits, referred to on page 434 of the testimony, will be marked for identification. I will not admit it at this time. C. 67, objected to on the ground that it is irrelevant and immaterial, is admitted.

Mr. Faulks. We renew the objection to all these letters with reference to Mr. Austin's bill for making the appraisal.

The Court. I will admit two letters, Exhibit C. 68 and C. 69, that is if the only objection is that they are immaterial and irrelevant.

Mr. Faulks. Yes, and the further objection that they are incompetent to support any of the charges of the bill.

The Court. Yes, that is included in the objection.

Mr. Faulks. I reserve at all times my general objection.

Mr. Ward. With reference to C. 69 I object to it in so far as it is supposed to prove the facts stated in the letter that the balance of cash in our hands has been turned over to the new management of the Metropolitan Company.

Mr. Faulks. I make the same objection with regard to C. 69 and C. 70.

The Court. The same ruling.

Mr. Faulks. I make the same objection to C. 71.

The Court. The same ruling.

Mr. Ward. The copy in the book of exhibits has no date.

Mr. Faulks. I make the same objection as to 72. May it be entered that that objection is renewed as to all the letters about Mr. Austin's bills.

The Court. Yes; the same ruling.

Mr. Faulks. Exhibit C. 85; I understand your Honor's ruling on this is different from those earlier this morning.

The Court. It is intended to be the same; it is marked now for identification. If counsel desire to have it in evidence they will have to reoffer it.

The Court. The question on page 460, beginning, "What did you mean in this letter," the answer thereto is at this time excluded; it may be offered at some other stage of the case. Page 496, the question, "Did you get any offers from the bondholders," down to the question and answer, "You got some bonds turned in." Answer: "Yes," objected to, and that is excluded.

Adjourned until tomorrow.

January 5, 1917.

Transcript of shorthand notes of testimony taken in the above entitled cause at Chancery Chambers, Newark, New Jersey, on January 5, 1917, before Honorable Merritt Lane.

Appearances as before stated.

Mr. Faulks. If your Honor please, at this time I would like to bring up a matter, and it is this. As I understand the situation in this case either side is at liberty to show any facts which are claimed to or may tend to sustain the alleged conspiracy or disprove it, whether they occurred before or after the institution of the suit, and that the defendant will be entitled to show the present financial condition of the company as a defense to the alleged conspiracy and as to the claim that the company is insolvent. It already appears that the lease or the operating agreement rather, from the Metropolitan Steamship Company to the Pacific Navigation Company which was made in October, 1910, has expired, and as a matter of fact a new operating agreement has been made between the steamship company and the Alaska and Pacific Company, another company operating on the Pacific Coast. That contract took effect on or about September 1st of last year. The contract with the Pacific Navigation Company expired on December 15th, 1915; the boats were then operated by the Metropolitan Steamship Company itself until September of last year, from the middle of September, 1913, until the first of September of last year,—I am making this statement for the information of the Court,—when there was a new operating agreement entered into with the Pacific Alaska Company, a company which is in no

way related to the Pacific Navigation Company. The terms of that operating contract are very favorable to the Metropolitan Steamship Company and its stockholders, as we of course claim that the terms of the previous operating agreement made with the Pacific Navigation Company were. That latter contract, the one now in existence, was not made, however, until after a stockholders' meeting had been called and held, and of the holding of which meeting notice was given to every stockholder either by mail or by personal service, including the complainant stockholders in this case. The lease was not authorized at the first of such meetings, that is the day on which the meeting was originally called and held, but an opportunity was then given to the complainants as well as to any other stockholders in the case to either disapprove of the proposed action or make any suggestion that they cared to make with reference to the return of the boats to these waters or otherwise. At that meeting Mr. Fernald, who was one of the complainants, appeared and afterwards, after the action had been taken, expressed his approval of it. Jennie R. Morse, another of the complainants, was not present in person at the meeting but was represented not by proxy but by a gentleman who said that he was there on her behalf; so that the only one of the present complainants who was not at the meeting was Mr. Mossman, the holder of one share of stock of the company. Now, if there is any doubt as to the right of the defendants to introduce those facts in evidence, or any other facts with relation to the present financial condition of the company under the existing pleadings, I would like to make an application at this time for leave to file a supplemental answer setting them up.

The Court. Is there any reason why that should not be granted?

Mr. English. Of course, I understand that there are a whole lot of things in your Honor's discretion and power and I don't suppose we could prevent it if we wanted to. I do not know whether it is material or not; I have no personal knowledge of what Mr. Faulks says; if he says so I suppose it is true, but as far as I am concerned I don't know anything about it.

The Court. You may file a supplemental answer.

Mr. Faulks. I will do that at the next hearing, if your Honor please.

The Court. It may be when Mr. Faulks files his supplemental answer that you may want to file some amendment also, Mr. English.

Mr. English. Yes; of course we want to preserve our rights. I suppose if we want leave to amend, or whatever the situation is, I suppose we can do so.

The Court. It will be granted.

Mr. Faulks. Now there is another question as to the regularity of the proceedings under which the depositions were taken. You asked that question at the outset of the hearing, and I think it was Mr. Brown or Mr. English said that there had been some question with reference to the depositions of these witnesses, and in glancing over the transcript now I observe that that is so and recollect that the situation was as follows; that the notice of the taking of the depositions in this case was served upon counsel for the defendants on or after June 2, 1915; the witnesses were required to appear before Judge Simpson by subpoenaes which were

issued by him on June 1st or prior to the issuance—

Mr. English. The same day, I think.

Mr. Faulks. Am I not right about that?

Mr. English. I think it was the same day.

Mr. Faulks. The subpoenaes were issued on the 1st, and the notice served on us on the second.

Mr. English. No, pardon me, Mr. Faulks, Mr. Clark testifies: "Q That was served on you on the second of June, 1915?" "A Yes." Page 1264.

Mr. Faulks. Yes, that is right; they were issued on the same day; those subpoenaes were issued on Monday the first, served on the second, and I think notice was served on us on the second; that is the time the Connecticut judge issued the subpoenaes requiring these witnesses to attend before him. There was no proceeding pending under any notice of the taking of depositions in that State. I presume that your Honor would afford the complainants the opportunity to secure this evidence if there is any question as to the regularity of the notice. I simply want to call your attention to the situation.

The Court. I will hold that the depositions were properly taken.

Mr. English. I will now read the testimony starting at page 1264.

The Court. The testimony from page 1264 to 1266, I will strike out that testimony, starting in with the cross examination and up to your further direct examination, Mr. English.

Mr. Faulks. Is it quite fair to do that? I suppose in case of appeal that this would remain

in, and the fact that you had striken it out would appear?

The Court. Yes.

Mr. Faulks. You see, we are caught between two bridges. The judge in Connecticut said it was for you to pass upon, and you say now that the witnesses appeared there and you have not anything to pass upon.

The Court. Well, I do not think it makes any difference whether the witnesses were kidnapped and brought there, as long as they got there and testified.

Mr. Faulks. That was not his view. I don't want to argue the matter, but simply to preserve this question in case of appeal.

The Court. Well, leave it in the record then. I will not strike it out.

January 10, 1917.

Continuation of proceedings pursuant to the adjournment last had, on the tenth day of January, 1917, at the place and in the presence of the parties and the Court as before.

Mr. Faulks. I have here the supplemental answers that were spoken about the other day, and which I would now like to file.

Mr. English. Your Honor will remember that on the reading of the depositions there was a stipulation read as to what two witnesses, Grace A. Lord and Ethel M. Scribner would testify if called. I did not have the original convenient at the time, it was in my papers, I found it, and think it should be filed with the other papers in the case; it has already been read to your Honor.

Now with reference to the application of Mr. Newbert and Mr. Noyes to be admitted in the case, I hand to your Honor a petition which I think is properly verified, and a formal order, of which I just handed counsel a copy.

Mr. Faulks. Is the petition identical with the other one, except it is a verification?

Mr. English. Yes, the body of the petition is exactly the same.

Mr. Faulks. I want to be heard with reference to that order; I have not had an opportunity to examine it.

The Court. We will let that go over until tomorrow morning.

Mr. English. Those complainants are in court prepared to testify. It is a question as to their ownership in that lease.

The Court. The only effect of this supplemental answer is to bring in the extinguishment of that lease, is it not?

Mr. Faulks. It does show that, and shows the making of a new lease. It also shows that the new lease was on notice to stockholders, and shows that the individual defendants are no longer directors in the company. It simply brings the situation up-to-date. It shows what the effect of the operation of the Pacific Navigation Company's contract was upon the financial condition of the company. Your Honor will hear me later with reference to this order.

The Court. Yes, I will lay that over until tomorrow morning.

Mr. English. Your Honor will remember that you temporarily passed certain exhibits and questions at the time we read the depositions, with leave to call them to your Honor's attention

again. I would like to call your Honor's attention to one or two of those, page 501 of the record, that was the testimony of Mr. Bowen when he was recalled, and it runs over for a couple of pages; the point of that was what he had paid for bonds for the sinking fund, and he said the average price was about sixty-two and a fraction, and at that time, on the objection of counsel, your Honor thought it was not material. Now I have this to suggest to your Honor as to why I think it is very material. Your Honor will remember that by exhibits in the case, C. 46 and C. 47 Mr. Calvin Austin, at the request of the Trust Company, appraised the freight boats and appraised the dock—no, not the dock, but the freight boats, and the two real estate men appraised the dock, each one of them submitting an appraisal. Mr. Austin's appraisal of the ships is exhibit C. 47, for the freight steamers $500,000; for the lighters $9,500; for the car floats, $8,000; for the equity in the Union Wharf $350,000, and some furniture and what not $4,000, making a total of $871,500. Your Honor will also remember that the transfer of the ships was for $650,000 of bonds, and the transfer of the wharf was for $350,000 of bonds, or a total face value of one million dollars in bonds. It seems to me that the actual value of the bonds, as evidenced by the market price at which they were purchased for the sinking fund ought to be evidence as showing how these people, in what we say was a part of their effort to wipe out this situation, turned in these properties at a very much reduced value. If you will figure it out you will see the significance of it, six hundred and fifty thousand dollars of bonds at sixty-two, making the price of the freight boats at $403,000,

whereas according to Mr. Austin's appraisement they were worth $500,000, for the boats, besides the floats and the lighters and the other stuff that went in. So that on their own showing they purchased those things at over a hundred thousand dollars less than the actual appraised value by their own men. The same thing is true of the wharf; the equity in the wharf was appraised at $350,000, and they were to turn in bonds for that amount. The actual amount of bonds turned in was $217,000, over one hundred and thirty thousand dollars less than the actual value by their own appraiser. Now we say, and before we get through I think we can show, that those appraisals were entirely too cheap, but, for the purpose of this argument, assume they are the actual values, nevertheless on their own showing they appropriate to themselves, if you will, these properties on this turn over of bonds at a price over one hundred thousand dollars less for the ships than they really admit the value of, and one hundred and thirty odd thousand dollars less than the wharf. Now if that is so, then I think we ought to have this evidence about the purchase of these bonds for the sinking fund, because that shows the market value of the bonds.

The Court. But the difficulty is that none of this evidence as to the value of the bonds goes to the time the transfer was made.

Mr. English. No, that is true, these bonds were taken up on or about 1913, and this was in 1910, but apparently as far as we know, as far as I know at least, it was the sale nearest that date, and I think it should go in for what it is worth, it may not be conclusive, but it certainly indicates that the bonds were not worth

par, and if not in 1913 they were not worth par in 1910; this was a brand new thing, and hadn't reasonably got going. It ought to go in for what it is worth, for your Honor to see whether or not this was a bona fide transfer for a bona fide value under the circumstances of the case.

The Court. I think I will reserve consideration of that. I do not think it is of much value because it is too remote, it is two years after the transaction took place.

Mr. English. It is remote, I concede that.

The Court. I understand they were sold anywhere between sixty and ninety, but the average was sixty-two and a half.

Mr. English. Yes, and that shows they were nearer sixty than ninety, if the average was sixty-two.

Mr. Faulks. I call your Honor's attention to the fact that time was three and a half years, almost four years, February, 1910, in one case, and November, 1913, in the other.

The Court. There was some evidence as to sales in 1912. I think the testimony is not of very much value, Mr. English.

Mr. English. It seemed to me it was of some value.

The Court. I will reserve consideration on it.

Mr. English. If your Honor concludes to change your mind with reference to the matter of course I want to be heard.

The Court. Certainly.

Mr. English. On page 458, with reference to Exhibit C. 85, that was Mr. Fessenden's testimony, and C. 85 was a letter which he had written to Mr. McKinnon back in 1909 with reference to something about Mr. Dimon as the man

who ran the boats for him. Apparently Mr. Fessenden at that time supposed that Mr. McKinnon personally, or through the company he was connected with, was going to operate the ships. The particular importance is the closing part of the large paragraph. Now it seems to me that that is material as showing that Mr. McKinnon was part and parcel of this general conspiracy with Mr. Robbins and Mr. Chase and Mr. Nicholson and all the rest of them to transfer these ships and thereby eliminate the very keen competition of the New Haven interests.

The Court. Do you claim McKinnon was a part of the conspiracy?

Mr. Faulks. That is the first time that claim was made.

Mr. English. We haven't had a chance to make it before, this is the first time the case was heard. He certainly was very acquiescent in everything that was asked of him in connection with this transfer.

The Court. You put in evidence testimony yourself that he had a distinct understanding with Robbins that the boats were to continue in operation.

Mr. English. Apparently he did.

The Court. That would be contrary to any idea that he was a party to the conspiracy.

Mr. English. I am not saying he was a conspirator, I am saying he was instrumental, either consciously or unconsciously, in carrying out Mr. Robbins' ideas in the matter, and in view of what his testimony is, as to what the arrangement was, and what he was going to do to put the arrangement through is very reasonable that he would not want to follow out Mr. Fessenden's

suggestion of creating this competition. It seems to me that bears on the question of what arrangements Mr. Robbins had made with him, and the interest of Mr. Robbins in making the arrangement which he did to eliminate these boats.

The Court. I will not change my ruling on that.

REUEL J. NOYES, sworn.

Direct examination by Mr. Swacker.

Q What is your residence? A Augusta, Maine.

Q Have you any interest in the Metropolitan Steamship Company of New Jersey notes? A I have, yes, sir.

Q I show you eight notes, what purport to be notes of the Metropolitan Steamship Company of New Jersey, numbered 527 to 534, for $1,000, and ask you if those notes belong to you? A Yes, sir, they do.

Q Will you state how you acquired them? A Why, I acquired them through what is called the Morse Securities Company, I presume, I paid for them in cash.

Q What amount did you pay for them? A I paid for those $8,000.

Mr. Faulks. I object to that as immaterial.

Mr. Swacker. I would like to offer the notes in evidence. If counsel do not object we would like to offer copies instead, being as these are negotiable and originals. I will read one of them in the record.

The Court. It is in the record, is it not?

Mr. Swacker. It is in the pleadings, yes.

The Court. There is no necessity then of reading it into the record now.

Cross examination by Mr. Faulks.

Q Mr. Noyes, where do you live? A Augusta, Maine.

Q How long have you lived there? A Practically all my life.

Q How long ago did you purchase these? A In September, 1909, I think September or August, 1909, as I recollect it.

Q Had you any interest in the Metropolitan Steamship Company of Maine, which was then in the hands of receivers? A Had any interest in it?

Q Yes. A Before that date?

Q Yes? A No, sir.

Q You were not a creditor of that company? A No, sir.

Q And were not a stockholder in it? A No, sir.

Q You purchased these notes for cash, you say? A Yes, sir.

Q From whom did you purchase them? A Well, the money was paid to the Morse Securities Company, I think.

Q Do you make a distinction as between the person or company from whom they were purchased and the person or company to whom the money was paid? A Why, you asked me who the money was paid to.

Q No, I did not. I asked you from whom you purchased the notes. A Well, from representatives of the Morse Securities Company.

Q Whom did you meet in connection with the transaction? A I met Mr. Reed.

Q Mr. William Reed? A Walter.

Q Mr. Walter Reed, the one that is commonly called Colonel Reed? A Yes.

Q Did you effect your purchase through him? A Well, yes.

Q Are you in doubt about it at all? A No, no, but I talked with other parties in regard to it, that is all I mean by that.

Q You made your purchase through Mr. Reed? A Practically, yes.

Q What did you pay for the notes? A I paid,—well, for the whole amount of each note?

Q For the eight thousand dollars par value of notes which you secured? A I paid $8,000.

Q Were you acquainted with Mr. Reed at that time? A Yes, sir.

Q Have you been acquainted with him ever since then? A Yes, sir.

Q Have you seen him from time to time since then? A Oh, occasionally, yes.

Q Have you ever had any talks with him about this suit? A Well, of course it has been mentioned, but I haven't seen him I don't think, for six months now, to this morning.

Q Well, prior to that how often had you seen him, for two or three years before that? A Oh, I might see him perhaps once in two or three months, just as I would meet him, or something like that.

Q When you did, you talked with him about this suit? A I suppose likely it was mentioned, yes.

Q You knew of its existence, did you not? A Oh, yes, I knew there was such a thing in existence surely.

Q You knew what the purpose of the suit was? A Why, yes.

Q When did you first get that information, how long ago? A Why, I can't say as regards to that, I didn't impress my mind with it.

Q At or about the time the suit was brought? A I should presume so, yes.

Q Have you ever taken any other legal steps than the one which is now sought to be taken by your petition and that of Elmer E. Newbert, with reference to these notes? A No, sir, I have not.

Said papers marked Exhibits C. 173, C. 174, C. 175, C. 176, C. 177, C. 178, C. 179, C. 180.

Q Will you be good enough to tell me when it was you purchased these notes? A Well, I said either September or August, 1909.

Q Have you any way of definitely fixing the date? A Well, I can definitely fix it by the time I sent a draft, I think.

Q I do not hear you. A On September 15, 1909.

Q And from what is it you refreshed your recollection that enables you to give us that definite date? A Well, it is an order of the Morse Securities Company.

Q And what was the Morse Securities Company? A Well, I don't know as I could definitely explain that to you, what the Morse Securities Company was.

Q Was it the company in which Mr. C. W. Morse was interested? A I presume he was, yes.

Q Have you sought to intervene in this suit at his request? A No, sir.

Q Or at his suggestion? A No, sir.

Q Or at the suggestion or request of anybody else? A Well, I don't know whose request it was.

Q Well, did anyone? A Why, we were simply requested to come here and testify as to the ownership of these notes.

Q Do you know that you made an application to be admitted as a party to this suit? A Yes, I presume we have.

Q My question is as to whether anyone requested you to make that application, or suggested that you should make it, and if so who was it? A Why, it came through the Augusta Trust Company of Augusta, requesting us to prove ownership, as I understood it, of these notes.

Q Who connected with or coming through the Augusta Trust Company, or anybody else, was it that, if at all, requested you to make this application in this case to be made a party to it? A Frank Smith, the cashier of the Augusta Trust Company is the one that notified me.

Q Do you know for whom he was acting? A Why, I am not positive about that.

Q Do you mean you haven't any legal knowledge? A I have no positive knowledge, no.

Q What information have you on the subject? A Why, I presume he is acting for the parties here interested in this suit of course.

Q And who are those parties? A Well, I am not able to name those; I know that Mr. Reed is here, and I don't know what he has to do with the suit, and I know there are other parties, that is all I know.

Q Who are the other parties to the suit?

Mr. English. I suppose the pleadings show that.

Q I want to see what the witness knows. A I presume, well, I can't state from knowledge, but I heard Miss Jennie Morse, or something like that, is connected with the suit.

Q I am asking you for your knowledge about it? A I don't know, I couldn't tell you positively.

Mr. Swacker. The witness has stated he doesn't know.

A You asked me for hearsay; I told you I wasn't positive.

Q You don't know who the complainants in the suit are? A No, I couldn't say, to take my oath to it.

Q You only were asked to intervene in the suit by Mr. Smith of the Augusta Trust Company? A Yes, sir, he asked me to.

Q How long ago was that? A Oh, I should say perhaps a month or six weeks, something like that; I don't know, might have been longer, might have been less.

Q Do you expect, if admitted as a party to this suit, to pay your proportion of the expenses of the case? A I suppose I shall have to.

Q Do you expect to pay them yourself? A Well, I don't know who else will pay them for me; I always have to pay my bills.

Q You do not expect that Mr. Smith, or whoever he represents, will pay them? A No; Mr. Smith never has paid any of my bills.

Q Do you expect Colonel Reed will pay them? A I do not suppose he will, no.

Q (*By the Court.*) Do you want to intervene and become a party to this suit? A Yes, sir.

Q (*By Mr. Ward.*) Have you read the bill of complaint in this suit, or a copy? A Why, no, I cannot say that I have.

Q (*By Mr. Ward.*) What do you understand to be the relief which you as complainant in this suit seek in this case? A What they seek, what I seek?

Q (*By Mr. Ward.*) Yes, as a party to the suit. A Well, now, I cannot answer you that question, I am not posted on this case, I am simply asked to come here and identify this paper here as mine, that is what I am asked to come here to do; I cannot go on and tell you about that, because I don't know; I am simply asked to come and prove a certain paper, prove that is my paper.

Q (*By Mr. Ward.*) Do you know that the bill of complaint in this case charges the directors of the Metropolitan Steamship Company with various frauds on the stockholders of the company? A I presume likely.

Q (*By Mr. Ward.*) Do you know anything about the Pacific Navigation Company? A No, sir.

Q (*By Mr. Ward.*) Did you ever hear of the Pacific Navigation Company? A Oh, I probably heard of it, yes.

Q (*By Mr. Ward.*) Do you know that the bill of complaint in this case charges the Pacific Navigation Company with having entered into a conspiracy with the directors of the Metropolitan Steamship Company to defraud it? A Nothing only hearsay.

Q What do you understand the purpose of this suit to be, Mr. Noyes? A Why, I don't know as I understand the purpose of the suit; as I told you before, I haven't gone into this suit at all; I was simply asked to come here and identify a certain piece of paper.

Q That is your only interest in the matter? A Yes.

Q That is the only reason you are here this morning? A Yes, to prove the claim of that paper.

Q Are you represented by counsel in this case? A No, sir, I am not.

Q You have not retained any counsel? A No, sir, I have not.

Q Have you authorized any counsel to file a petition in this case asking that you be admitted as a party? A I suppose I have, yes.

Q Well, do you know whether you have or not? A Well, I know I signed a paper when Mr. Smith, as I told you before, asked us to intervene and prove our notes. I signed a paper and it was sent on here.

Q What was that paper that you signed? A Well, now, I am not enough lawyer to tell you what that paper was.

Q Did you read it before you signed it? A Well, very hurriedly; I couldn't tell you what was in it now; simply that it was explained to me. It was simply to intervene in the suit to prove the ownership of these notes.

Q Do you know what counsel presented the paper before you? A What counsel?

Q Yes. A Presented the papers?

Q Yes. A No, I don't know.

Q You haven't retained anybody to represent you in this case? A No, I am not represented in this case.

Q (*By Mr. Ward.*) You understand that this suit, among other things, was for the purpose of appointing a receiver of the Metropolitan Steamship Company? A Why, I have heard that. I heard that talked over. I don't

know positively about that more than I do any other parts of the suit. As I told you, I am not posted on the suit. I don't know; I cannot answer those questions. I haven't followed it up; I am here for one purpose, to identify that paper. That is all I know about it.

Q Do you know why Mr. Smith asked you to intervene in this suit?

The Court. This is getting to be interminable, and you have examined the witness three or four times. Mr. Ward has examined him three or four times, and I do not believe any further examination will bring out anything new.

Mr. Faulks. Is there any objection to this one question?

Mr. English. Yes; I object to it.

The Court. I will admit that question.

Q (Question read.) A Why, no; I cannot say as I do.

Re-direct examination by Mr. Swacker.

Q You deposited your notes along with a number of other note holders with the Trust Company, did you not? A Yes.

Q They were looking after your interest in regard to the matter? A Yes.

Q Mr. Smith had been in active charge or looking after your interest in the matter? A Yes.

Q So far as you know he has retained counsel to look after it? A Yes, but I haven't myself.

Q You have contributed to the expense of counsel looking after it, have you not? A Oh, yes.

Q You say that it was in September, 1909, that you paid your money for these notes? A Yes.

Q Was it some time subsequent that you got the notes? A Yes, it was; yes, sir.

Q About how long? A Well, now, I can't say as to the date, I can't say in regard to that, but I guess it was a number of months.

Q You authorized Mr. Smith to act for you in relation to obtaining counsel and see what steps could be taken to protect your interest, did you not? A Why, yes.

Mr. Faulks. Wait a moment. I object to the question as leading.

Mr. Swacker. It is in respect of the question asked by counsel as to whether he had authorized anybody to act for him.

The Court. It is leading. You can ask him what he did.

Q Will you say what you did do with regard to authorizing anybody to act for you to protect your interests? A Well, Mr. Smith has kept the paper there in the Augusta Trust Company, and he has personally attended to the communications and looked after the business. Once in a while he would say something to us about it. He acted, you might say perhaps, as an agent, but not as an attorney. He has never been paid anything for it, I don't think, in any way.

Q (*By the Court.*) Kindly speak louder. A I say I don't think, to my knowledge, Mr. Smith has been paid anything for it; he has simply acted in that capacity because he is interested himself, and being in the bank he has kind of taken charge of it, that is all; but

I haven't employed him as counsel because he is not a lawyer himself; he is a bank cashier.

Q You have contributed to the payment of counsel fees heretofore? A Yes.

Q There are a number of other note holders who are co-operating with you, are there not? A Yes, sir.

Re-cross examination by Mr. Faulks.

Q When did you make your first payment toward the expenses of this suit? A Well, now, I cannot tell you unless I look it up from back checks.

Q Well, approximately, how long ago? A I should say it must be a year and a half ago, perhaps.

Q Why should you have contributed at that time to this suit? You were not a party to it then, were you?

Mr. Swacker. He did not say he had contributed to this suit; he said he had contributed to the payment of counsel to look after his interest in the matter.

The Court. Counsel is cross examining.

Q (Question read.) A I don't know but that I was as much a party to it then as I am now.

Q You speak of having deposited your notes with the Augusta Trust Company? A Yes, sir.

Q Did you do that under any instrument of writing? A Oh, no; just simply left them there because I wanted to, for safe keeping.

Mr. English. Miss Morse is here and not particularly well; I would like to call her, so that she can leave.

JENNIE R. MORSE sworn.

Direct examination by Mr. English.

Q You are the person who brought this suit, or one of the persons? A I am.

Q And you authorized the bringing of the suit? A I did.

Q Did you used to own bonds in the old Metropolitan Steamship Company? A I did,

Q After that company was reorganized did you get some shares of stock in the new company? A Yes.

Q Do you remember whether you received this letter which I show you, from the American Trust Company, dated March 10, 1910? A If it was sent to Bath, I suppose I received it.

Q It is addressed to you at Bath? A Yes.

Mr. English. I offer this in evidence. It is addressed to Miss Morse, from the Secretary of the American Trust Company, "In exchange for our certificates of deposit Nos. 420 and 447 representing $7000 bonds of the Metropolitan Steamship Company, we enclose herewith by registered mail, insured, the following:

Account Certificate #420 $3000 par value first mortgage 5% bonds of the Metropolitan Steamship Company, New Jersey, Nos. 713-716 inclusive for $1000 each, having coupons due July 1, 1910, and subsequent, attached.

Certificate #24 duly endorsed in blank for one share of stock of the Metropolitan Steamship Company.

American Trust Company scrip certificate No. 14 representing $50 par value of said stock.

Check for $18.75 in payment of the January 1, 1910 coupons detached from the aforesaid bonds.

Account Certificate #447.

$4000. par value first mortgage 5% bonds of the Metropolitan Steamship Company Nos. 716-719 inclusive for $1000 each, having coupons due July 1, 1910, and subsequent attached.

Certificate #61 duly endorsed in blank for two shares of stock of the Metropolitan S. S. Co.

We have remitted to you previously for cash payments due on account of certificate #447. Kindly sign and return the receipt accompanying, and oblige."

Marked Exhibit C. 181.

Q So that along with this letter you got three shares of stock, one certificate for two and one for one. Now, I show you certificate No. 139 for three shares of stock; that represents those three shares of stock in another certificate? A Yes.

Q You know that some time after that date, and shortly before this bill was filed, 134 more shares were transferred to you by certificate No. 142? A That is so, I think.

Mr. English. I will offer this in evidence, certificate 139 for three shares.

Marked Exhibit C. 182.

Mr. English. I also offer in evidence certificate 142 for 134 shares.

Marked Exhibit C. 183.

Q Until just shortly prior to the time when you authorized the bringing of this suit had

you ever heard that the Metropolitan Steamship Company in which you owned this stock had sold their freight boats? A I couldn't say.

Q Or that they had sent the Harvard and Yale off to the Pacific coast?

Mr. Faulks. I object to the questions as being leading.

Mr. English. They are in a certain sense.

Mr. Faulks. Well, this is a party to the suit.

The Court. I will admit them.

Q Or that they had sent the Harvard and Yale off to the Pacific coast?

Mr. Faulks. I object to that question in that form.

The Court. I will admit it.

Q Who looked after your personal affairs in these various business transactions? A My brother, fully.

Q Mr. C. W. Morse? A I gave him full authority.

Q Any papers that you received, what did you do with them? A I sent them to my brother.

Q Right away? A Immediately.

Q Do you remember receiving any papers in connection with this company's business, except this letter and this certificate of stock? A I do not remember.

Q You have no recollection of receiving any notice, or anything like that? A No, sir, don't remember.

Q If you did receive any such paper, what did you do with it? A Sent immediately to my brother; he had full charge.

Cross examination by Mr. Faulks.

Q I observe that this certificate for the three shares is dated March 15, 1911; does this represent the same three shares for which certificates were sent you by the American Trust Company in March, 1910? A I don't know; my brother could tell you. He had full charge.

Q Did you ever yourself cause any of the certificates of stock which you owned in this company to be recorded on the books of the company? A I don't remember; my brother could tell.

Q We would have to get that from your brother? A Yes; I gave him full authority.

Q When did you acquire the 134 shares which are represented by the second certificate which Mr. English showed you, No. 142? A That I do not remember.

Q You have no recollection on the subject at all? A I don't remember; no, sir.

Q From whom did you acquire those shares? A My brother can tell.

Q The same brother? A Yes, sir, my brother.

Q You cannot tell when you acquired them? A No, sir.

Q Did you receive a certificate at that time? A That I cannot remember; I suppose so.

Q Did you purchase the one hundred and thirty-four shares, represented by this certificate, from your brother? A I do not remember. He looked after my affairs entirely, and he will tell you.

Q You do not know? A I had nothing to do with the business.

Q Had nothing to do with it? A No, sir.

Q You do not know whether you paid anything for the one hundred and thirty-four shares or not, then? A My brother can tell you the whole transaction.

Q I am asking you whether you know whether you paid anything for them? A Well, that my brother can tell.

Q Is it not a fact, Miss Morse, that these shares are owned by your brother, and simply stand in your name? A No, sir, it is my shares.

Q They are your shares? A Yes, sir.

Q Yet you cannot say whether you ever paid anything for them or not? A I always paid for my shares.

Q Can you say whether you ever paid anything for any of these one hundred and thirty shares or not? A I presume I paid for them at the time, but I cannot remember.

Q You presume you did? Yes, sir.

Q How did you come to purchase them, if you did purchase them? A My brother did the whole of my business. I left it entirely with him, and he will tell you, and explain it all.

Q How did you come to be the original complainant in this suit?

Mr. English. I object to that, how she came to be. She is here; she is a complainant, and she is a stockholder.

The Court. I will admit this question.

Q (Question read.) A I gave my brother full authority to bring the suit in my name.

Q And what ever has been done in this suit in your name has been done by him? A Yes, sir; he had full authority to do as he chose.

Q Have you thus far paid anything toward the expenses of this suit?

Mr. English. That I object to.

The Court. I will admit it.

Q (Question read.) A As I know nothing about business I have given it entirely to my brother to take charge of.

Q Won't you answer the question?

Mr. English. She has.

A As I know nothing about business I have given it entirely to my brother to look after.

Q You have not paid anything yet toward the expense of this suit? A He has charge of it and looks after the whole of it.

Q Do you know what charges are made in this suit? A I do not.

The Court. The bill is not sworn to, is it?

Mr. English. No, sir.

I subpoened the other side to produce the stock and transfer books.

(Produced.)

Q At any time after you obtained any shares of stock in this company did you furnish the company with your address?

Mr. English. I object to that as immaterial. I do not think it makes any difference.

The Court. It might on the question of their sending notice.

Mr. English. Oh, I see.

A I do not remember.

Q You do not remember that you ever did? A No, sir.

Q Now, last summer were you served with notice of a stockholders' meeting of the Metro-

politan Steamship Company? A I do not remember of it.

Q You live in Bath, Maine, do you not? A Yes, sir.

Q Were you home in June of last year, 1915? A Up to June or July, did you say?

Q I am asking about June now, 1916, not 1915; last June. A I couldn't say.

Q Do you know a sheriff, or a deputy sheriff, by the name of Norris? A No, sir, I do not.

Q Whereabouts do you reside in Bath? A 942 Washington Street.

Q Do you know a John A. Norris, a man by the name of John A. Norris? A I don't think I do, sir.

Mr. English. I would like to offer in evidence the stock and transfer books which have been produced under our subpoena, and out of those books I want to call particular attention on the record to this history of stock transfers.

Mr. Faulks. Are you offering the entire book?

Mr. English. I suppose the practice is to offer the books, and call attention to such parts as are material. I am proceeding on that theory.

Mr. Ward. Transfer book and stock book?

Mr. English. There are two books here, seem to be two stock certificate books. What I want to call attention to and make part of my case, your Honor, is this temporary certificate No. 4, dated November 22, 1909, issued to John W. McKinnon for 1241 shares.

Certificate No. 4 seems to have been two fours; first seems to have been a mere temporary something—official certificate No. 4, dated November 23, 1909, for twelve hundred and forty-one shares, issued to William C. Watt.

Certificate No. 10, dated January 4, 1910, for forty-four shares, issued to William C. Watt, and in connection with that the stub to which the cancelled certificate is attached, which shows that those forty-four shares were a part of this original certificate No. 4 which had been issued to Mr. Watt.

Certificate No. 24, for one share, dated January 4, 1910, issued to William C. Watt, and the stub from which it appears that this one share of stock came out of certificate No. 4, and from No. 10.

Certificate No. 61, dated January 4, 1910, issued to William C. Watt, for two shares, and the stub from which it appears that they are a part of the shares mentioned in the original certificate No. 4.

Next, the stub of certificate No. 139, which is the stub which matches the certificate of that number, and which certificate is in evidence as Exhibit C. 182. This stub of 139 shows that the three shares mentioned in certificate No. 139 were the shares represented by certificate No. 24 for one share and certificate 61 for two shares, all of which relate back to the original certificate held by Mr. Watt.

Mr. Faulks. Give the date on which certificate No. 139 was issued.

Mr. English. March 15, 1911.

Then, as showing the history of the one hundred and thirty-four shares standing in the complainant, Morse's name, represented by certificate 142, in evidence as Exhibit C. 183, I call attention from the stock certificate book to the following certificate:

Certificate No. 38, issued to William C. Watt, for one share, dated January 4, 1910, and the stub which shows that it is a part of the original certificate No. 4.

Also certificate No. 39, to William C. Watt, for one share, dated January 4, 1910, the stub of which shows that it came from the original certificate No. 4.

Also certificate No. 95 for two hundred and ten shares, issued to William C. Watt, dated January 4, 1910, and the stub which shows that they were a part of original certificate No. 4.

Next, certificate No. 100 for twenty-five shares, dated January 11, 1910, issued to William C. Watt, and the stub which shows that they were a part of certificate No. 95, which in turn is part of No. 4.

Also certificate No. 101, for twenty-five shares, issued to William C. Watt, dated January 11, 1910, and the stub which shows that they were a part of No. 95, which in turn is a part of No. 4.

Also certificate No. 103, for twenty-five shares, dated January 11, 1910, issued to William C. Watt ,and the stub which shows that they were a part of certificate No. 95, and through it, No. 4.

Also certificate No. 104, for twenty-five shares, issued to William C. Watt, dated January 11, 1910, and the stub which shows that they were a part of the shares representing certificate No. 95, and came from No. 4.

Also certificate No. 108, for twenty shares, to William C. Watt, dated January 11, 1910, and the stub which shows that they came through certificate No. 95, from No. 4.

Also certificate No. 94, for forty-two shares, issued to William C. Watt, dated January 4, 1910, and the stub which shows it was a part of original certificate No. 4.

Also certificate No. 110, for twelve shares, issued to William C. Watt, dated January 11, 1910, and the stub which shows it was a part of certificate No. 94, which in turn was a part of No. 4.

And finally, the stub of certificate No. 142, which certificate is in evidence as C. 183, which stub shows that the one hundred and thirty-four shares represented by certificate No. 142 came from certificates Nos. 38, 39, 100, 101, 103, 104, 108 and 110.

Mr. Faulks. What is the date of that?

Mr. English. Certificate 142 is dated September 3, 1912. That completes the record of the shares of the complainant Morse.

Now, I offer in evidence the stub of certificate 122, issued to William A. Mossman, of Boston, dated March 1, 1910, for one share, and which stub shows that his certificate came from shares represented by certificate No. 45.

I also offer in evidence certificate No. 45, for one share, issued to William C. Watt, dated January 4, 1910, and the stub which shows that it was a part of the original certificate No. 4.

Also offer in evidence stub of certificate No. 146, for thirty-six shares, issued to George A. Fernald & Company, of Boston, dated June 15, 1916, which stub shows that they were a part of certificate No. 93.

Also certificate No. 93, for thirty-six shares, issued to William C. Watt, dated January 4, 1910, and the stub which shows they were a part of the original certificate No. 4.

Also certificate stub number 147, for one share, issued to George A. Fernald & Company, of Boston, dated January 15, 1916, which stub shows that they were a part of certificate No. 21.

Also certificate No. 21, for one share, to William C. Watt, dated January 4, 1910, and the stub which shows that it came out of certificate No. 10, which in turn came out of certificate No. 4.

Also certificate stub number 148, for five shares, issued to George A. Fernald & Company, of Boston, dated June 29, 1916, and the stub which shows that they came from certificate No. 79.

Also certificate No. 79, for five shares, issued to William C. Watt, dated January 4, 1910, and the stub which shows that they came out of the original certificate No. 4.

Book containing certificates 1 to 100 marked Exhibit C. 184.

Book containing certificates from 101 on, marked Exhibit C. 185.

ELMER E. NEWBERT sworn.

Direct examination by Mr. Swacker.

Q Where do you reside? A Augusta, Maine.

Q Do you own any notes of the Metropolitan Steamship Company of New Jersey? A I do.

Q Have you them with you? A I have.

Q How many do you own? A Two.

Q Nos. 519 and 526, for two thousand dollars each? A Yes, sir.

Mr. Swacker. I would like to offer those in evidence, and ask that they be marked complainant's exhibits.

Marked Exhibit C. 186 and C. 187.

Q Did you pay for those notes? A I did.

Q What did you pay for them? A Paid $4,000.

Q At or about the time of their date? A September 24, 1909.

Q Did you get them at once, or shortly thereafter? A I did not buy the notes. I got those notes; I didn't buy them, if you wish to know that.

Q You paid $4,000 to whom? A I paid $2000 to the Morse Securities Company on draft, September 24, 1909, and I paid, I think, Mr. R. J. Noyes, of Augusta, who has just testified, $2,000.

Q (*By Mr. Faulks.*) Who was the first two thousand dollars paid to, please? A Morse Securities Company.

Q You got these notes for that money, did you? A Yes.

Cross examination by Mr. Faulks.

Q Mr. Newbert, did you say that both these payments were made on the same day? A Twenty-fourth of September, 1909.

Q And were they made in payment for these notes? A They were made in payment for securities of the Metropolitan Steamship Company.

Q What securities? A Securities in anticipation of certain stocks and bonds. I don't know now just what the details were.

Q You do not remember now what the securities were that you understood you were purchasing at that time? A Certain stocks and bonds of the Metropolitan Steamship Company. I don't know just what the provision was now.

Q Did you ever obtain any of the stock or bonds in that company? A Never did.

Q Only the notes? A I received the notes about three months afterwards.

Q What was the Morse Securities Company, if you know? A I do not know, sir.

Q When did you first learn of the institution of this suit in which you now seek to intervene? A Oh, by hearsay. I don't know whether it is two years ago or three years, or when it was.

Q Have you heretofore contributed anything toward the expense of that suit? A I do not think towards this particular suit; no, sir.

Q Well, have you contributed anything toward the expense of any other suit against the Metropolitan Steamship Company? A No suit as far as I know.

Q You have made payments through Col. Reed, have you not, of various sums, from time to time? A Not through Col. Reed, that I remember.

Q Through the Augusta Trust Company? A Yes, sir.

Q Do you remember how much those payments aggregated? A One hundred and eighty dollars; let me see, one hundred and sixty dollars.

Q Over how long a period of time have you been paying them? A I made two payments, I don't know, possibly a year apart. I made $80 each time, and I do not recall; it seems to me it is all within four years.

Q Yes, I guess so. Well, for what purpose did you make those payments? A For the employment of counsel to protect our interests.

Q Did you know at the time you made those payments what this suit was about? A I think so, in a general way.

Q What did you understand it to be about? A Understood that the purpose of the suit was the appointment of a receiver of the Metropolitan Steamship Company.

Q Of New Jersey? A Of New Jersey, I think. I don't want to get tangled up with New Jersey and Maine. I don't know much about it.

Q Well, the company which issued these notes which you produced this morning? A Yes.

Q From whom did you get that information? A Why, I think from the Augusta Trust Company.

Q You have had that information for three or four years? A Oh, yes, in that general way.

Q How does it come about that you seek to intervene in the suit at this time? A On advice of counsel whom we had employed.

Q And who is that? A As far as I know, I don't know that I have any personal direct in-

formation, but as far as I know by general understanding, Martin Littleton.

Q Do you know Mr. Brown who is here? A I do not.

Q Mr. Martin Littleton, of New York? A I understand so.

Q These payments which you made were made to him, as you understand, in order to enable him to prosecute this suit and to defray the expenses of this suit? A All I know is that we were paying him to look after the interests of the note holders and stockholders.

Q In this suit? A Well, I am not so sure about the relations of this suit in those early months. I supposed I was being protected and the thing was going on legally, that is all I knew about it.

Q You knew suit was going on in an attempt to secure the appointment of receivers for the Metropolitan Steamship Company? A Yes.

Q You knew counsel had been employed in that suit for your interest? A Yes, I assumed so.

Q You contributed toward the expense that that involved? A Yes, I paid my assessment.

Q And all that you have known for four years or so? A I think as much as that; I don't know the exact period.

Q You recently signed a petition for leave to intervene in this case, did you not? A Yes, sir.

Q You did that at whose suggestion? A Why, directly to me, the suggestion of the Augusta Trust Company.

Q Well, do you know from whom they received it; you say directly? A I have no doubt

it came from Mr. Littleton's office; it came from our counsel, anyway.

Q (*By Mr. Swacker.*) You do not know just who advised the Trust Company to have a petition brought in her name? A Of my own personal knowledge, no, I do not.

CHARLES W. MORSE sworn.

Direct examination by Mr. English.

Q You live where? A 255 West 84th Street, New York City.

Q What is your business? A President of the United States Steamship Company.

Q How long have you been engaged in the steamship business in various ways? A All my life.

Q You are a brother of one of the complainants, Miss Jennie R. Morse? A I am.

Q Who looks after her personal business affairs? A I always have.

Q And for how long have you, with reference to the filing of this bill, which was in 1912? A Oh, long years before that.

Q What was her habit with reference to sending you papers of any business character? A She always sent them to me, any notices of meetings, stockholders' meetings, or anything of that kind, she at once sent them to me to look after.

Q Do you know of your knowledge, from handling her affairs, whether she owned any bonds in the old Metropolitan Steamship Company of Maine, owned by Mr. Whitney? A She did.

Q Do you know whether on the reorganization, after the receivers' sale, she acquired any

securities of the New Jersey company? A She did.

Q In connection with that do you know whether she acquired any stock? A She did.

Q I show you certificate No. 139, for three shares; do you know whether she got that in connection with that organization? A She did.

Q Now, I show you another certificate, No. 142, which is in evidence as C. 183, which was transferred to her in December of 1912. Do you know anything about that? A That I bought for her at a nominal consideration.

Q Just prior to the bringing of this suit? A Prior to bringing this suit.

Q Did Miss Morse ever send to you any notices of any meetings of the stockholders of the New Jersey company?

Mr. Faulks. I object to that as immaterial.

The Court. I will admit it. She has testified that everything she received she sent to him.

A The only notice of a meeting I received was this mid-summer on my return from Europe.

Q You mean 1916? A Yes.

Q That is the only notice you ever reecived from her as having been received from the company? A Yes.

Q Mr. Morse, were you ever connected with any companies which took over the Metropolitan Steamship line, which had been operated by Mr. Whitney? A Yes.

Q When was that? A Well, I am not good on dates, but I think it was 1905.

Q Around 1905? A I think so.

Q And what was the name of the company which acquired that interest? A Metropolitan Steamship Company.

Q Do you remember what you paid the Whitney Company, as I will now call it, for that transfer? A Yes, sir.

Mr. Faulks. Wait a moment. I object to that.

The Court. How is that material?

Mr. English. To show the value of this property. One of the disputed questions here is the question of value. I want to show what the actual price paid for this freight line was, which counsel says was a failure and never made money. I want to show the price paid by Mr. Morse's company at the time he acquired it. I think it is very material in this case, because it is contended in the answer, and will be contended by counsel, that the best thing that ever happened to this defendant company was to wipe out these freight boats, and Mr. Morse bought the freight line, those very boats, operating that very business which they say is a dead loss, and it is evidence as to whether that thing was valuable or not.

The Court. I will exclude it at this time as too remote.

Mr. English. May I bring it up again if it is material?

The Court. Yes.

Mr. Faulks. Won't your honor pass on the question as to whether or not evidence as to the value of boats is admissible under these pleadings. The only evidence in the

entire case on that subject is the evidence put in by Mr. English in Boston; namely, Mr. Austin's appraisal. The evidence that he says I brought out was brought out only on cross-examination and was directed solely to the question of whether or not the operation of these boats had been profitable, not at all the question of value. The charge in the bill is that these sales were made with the purpose of ruining this company, and doing that in the interest of the New Haven company.

The Court. Proceed with the witness; I will pass on that later.

Mr. English. Your Honor overrules that particular question as to what he paid for it?

The Court. Yes.

Q After your interests acquired that Metropolitan line, under what company was it operated? A Metropolitan Steamship Company.

Q That was the Maine corporation? A Yes.

Q What we call the Maine No. 1. For how long did your Maine Company No. 1 operate the Metropolitan line? A Two or three years.

Q From the date you acquired it until the receivership? A Until the receivership, yes.

Q During the larger part of that time it was operated as a freight line, was it not? A Yes, sir.

Q As a business proposition, operated as a freight line, did it pay or did it not pay?

Mr. Faulks. I object to that question in that general form.

The Court. I will exclude that question because of the form. He has not shown

any knowledge. How can he say, does it pay or not?

Q What position did you hold in that Maine company? A I was one of the directors.

Q How closely did you keep in touch with the operations of the company? A Mr. Austin reported to me every month.

Q What was Mr. Austin in the company? A President of it.

Q You kept in touch, through Mr. Austin, with the situation? A I did.

Mr. Faulks. I object to that question. Keeping in touch is very indefinite. The witness said Mr. Austin reported to him every month. If Mr. Austin did anything more; if he got any information in any other way, well and good.

Q How often did you have directors' meetings? A Once a month.

Q Did you attend them? A Most always.

Q Were reports made at those directors' meetings of the business affairs of the company? A There were.

Q Who did the reporting? A The treasurer.

Q Who was that? A Mr. Pepper, either him or James T. Morse, I can't say which.

Q Did Mr. Austin attend? A Yes, sir.

Q Mr. Austin was the operating man? A He was the president; yes.

Q Did you acquire any other information from any officers or directors of the company besides what you got at those directors' meetings? A Well, the affairs of the company were always discussed every week.

Q Every week? A Yes.

Q By and between whom? A Between Mr. Austin and myself.

Q So you had those weekly conferences with Mr. Austin, and the different monthly directors' meetings where would you and Mr. Austin hold your conferences? A Generally in my office.

Q He would come to New York for that purpose? A Yes.

Q In those conferences what would be discussed with reference to the business operations of the company? A All the companies we were interested in together would be discussed.

Q I mean with reference to this particular Maine corporation? A That along with others was always discussed.

Q You had a large financial interest in the company, did you not? A Yes.

Q Now, from information which you obtained from those reports which were submitted, and discussions about the business affairs,—I suppose you examined statements of the accounts, did you not? A I presume so.

Q Can you say from that knowledge which you acquired whether or not the Metropolitan line, as operated by this Maine Company No. 1, was a successful business affair?

Mr. Faulks. I ask leave to cross-examine, if your honor please.

The Court. You may.

Cross examination by Mr. Faulks.

Q Mr. Morse, at or about the time that you bought this Metropolitan Steamship Company of Maine from Mr. Whitney, or the Whitneys, you also bought the controlling interest in a large number of other steamship companies, did you

not? A I never bought the controlling interest, I bought the companies.

Q And there were a large number of such steamship companies that you acquired at that time? A Yes, sir.

Q You were a very busy man for a few years after that, were you not? A Yes, sir.

Q In addition to your steamship business you were carrying on other business and charged with other interests, were you not? A Yes.

Q You were largely involved in banking business, I think? A Well, not as an officer; I never was an officer of a bank in my life; I was a director.

Q You devoted a great deal of time to banking matters, did you not? A No, sir.

Q Did you have any other interest, other than steamship business and bank interests? A Oh, yes.

Q How much of your business time between 1905 and 1907 did you devote to the Metropolitan Steamship Company of Maine? A Probably very little to that one.

Q Not more than a few minutes a month at most, did you? A Whenever it would come in discussion with the other steamship matters.

Q Mr. Austin was the president of the company? A Yes.

Q And he really ran it? A Yes, sir.

Q And he knew more about the business and about the boats than anybody else? A I would not take his judgment on the value of the boats.

Q He knew more about the business of the company than anybody else? A The details of keeping them in order, yes.

Charles W. Morse, further direct.

Further direct examination by Mr. English.

Q Did you know enough to know whether your company paid dividends or not? A I do not recall on whether we declared any dividends or not.

Q Tell me whether or not it was a paying proposition? A We always considered it so; yes, sir.

Q When was it that you started in to build or conceived the idea of building the passenger steamers Harvard and Yale? A Nineteen hundred and, well, just after I bought, I should say a year perhaps after I bought.

Q After you ran it a year as a freight line then you conceived the idea of making it a passenger line, too? A Yes.

Q There was more or less notoriety, I imagine, attendant on the announcement of the proposal to build the Harvard and Yale, was there not? A There always is, on such a line

Q At the time the building of the Harvard and Yale was being noised abroad did you come in contact with anybody representing the New Haven railroad? A Yes, sir.

Q Who?

Mr. Faulks. I object to that as immaterial.

Mr. English. I think this is quite a material thing in this case.

The Court. I can see how it may be. I will admit it.

Mr. Ward. Of course I object to this question, and any line of questions, as not being relevant against the Pacific Navigation Company.

Charles W. Morse, further direct.

Mr. Faulks. I understood that your Honor desired that I defer my argument on the question as to the objections arising out of the New Haven question until we closed the case, so I will just note the objection now.

The Court. Yes; we cannot tell how much of it is going to go out before we get through.

Q (Question read). A Mr. Mellen, president.

Q Where was it you met Mr. Mellen in that matter? A I was invited to dine with him at the Union League Club.

Q Do you remember by whom you were invited? A Mr. Stevenson Taylor.

Q Who is he? A He was his handy man.

Q Mr. Mellen's handy man? A Yes.

Q When you speak of Mr. Mellen you mean the former president of the New Haven railroad? A Yes, sir.

Q *(By the Court)* When was that? A I think it was 1906 or 1907.

Q Well, did you meet him at the dinner? A I did.

Q Had a discussion with him? A Yes, sir.

Q Was the manner of the building of the Harvard and Yale, and their effect on the traffic between New York and Boston discussed? A Yes, sir.

Q What was it?

Mr. Faulks. I understand that the objection stands to this entire line, your Honor?

The Court. Yes.

A Mr. Mellen said that he desired to obtain a monopoly of the passenger business between

New York and Boston, or in fact to cover New England, and he wanted to buy the Harvard and Yale; I told him that we had gone so far, and advertised it to such an extent, that I did not see how it was possible for us to sell out at this time, that this wasn't any strike against the New Haven, that if these boats were not profitable, as he thought they would not be, we would not sell them to him at any price, but we would withdraw them; if they were profitable, we would meet again and discuss it, but as he was satisfied that no passenger line could be run at a profit, I told him he need not consider buying them at all, because we would not run them at a loss, and we would not sell them to him if they showed a loss. In further discussion—

Q (*By Mr. Faulks.*) At the same time and place? A Yes. In further discussion I told him that I would like very much to purchase the steamship lines which the New Haven owned, that I believed that the government would put him out of business in that line very shortly, and rather than to have a dozen lines competing with him I thought that the railroads' interests would be better served if his boats were turned over to one concern.

Q And what lines did you refer to in making that proposition? A All of the Sound lines.

Q The Fall River, and lines of that kind? A The Fall River, and all the steamships between New York and Boston that we owned.

Q All right. A We talked probably two hours alone about that. He said "I believe it is right, and I will do it." The other gentlemen who were at the dinner was Mr. Austin. Mr. Stevenson Taylor, and Mr. Palmer, of the Quintard Iron Works. After we adjourned from

the other room where we were alone talking, he said to them "Gentlemen, I came here with the intention of buying Mr. Morse's steamships, and I am going away with a resolve to sell him out."

Q Did he say what steps he would take to that end if any? A He asked me to get them appraised, to look over the property and see what it was.

Q Did he say what action he would have to take, or would have to be taken? A Well, yes; I can't say that this happened just at this time, but after that I saw him two or three times at the depot, his office, and he gave me a list of values. I knew most of his properties, except one item which he carried, thirteen or fourteen hundred thousand dollars, he had it in one name or designation, I do not recollect the name; I said "what is that, I know most of these boats, but I don't know that"; "Oh," he said, "that is where we carry the Joy Line," he said, "it is illegal for us to own it, but we bought it, and I carry it in our assets under this name; we will turn it over to you with the property."

Mr. Faulks. I move that be stricken out as not having any bearing in this case.

The Court. If it shows that the New York, New Haven & Hartford had really bought up and obtained control of the Joy Line to stifle competition, is not that some evidence?

A They owned the whole of it.

Mr. Faulks. I do not think anything Mr. Mellen may have said of the character Mr. Morse has just stated has any bearing in this case.

The Court. I will allow it to stand.

Mr. Faulks. Whether he knew it was illegal or did not know it was illegal.

Charles W. Morse, further direct.

Q Go on. A After that he told me that he wanted twenty million dollars or the property; that if I would raise five million he would take bonds for fifteen; I said "Mr. Mellen, I cannot see any such value there, the most I can see is possibly eleven or twelve million dollars." "Well" he said, "Mr. Morse, I do not want to chalk-mark this property down, but I will guarantee for a long term of years to furnish your business, furnish your docks, load and unload your boats"; I said "You can make the condition so that the property is worth thirty million dollars, if you wish to make conditions of that kind"; he said "I will make it perfectly satisfactory, and see that the proper contract is carried out, but in the meanwhile," he said, "I have talked with Mr. Morgan about it."

Q What Mr. Morgan was that? A J. P. Morgan.

Q The elder? A The elder, now dead; "and I made an appointment for you to see him in his library, and I want his sanction, and you can talk with him about it."

Q Was Mr. Morgan a director of the New Haven? A Yes. I went to his library and met him, and talked probably an hour with him about our interests and what we were going to do; he asked me to come again, and he would think it over. I went the second time. He said "Mr. Morse, I have concluded that I am going to put that thing through for you, and I want you to have it," he said. "We will have a meeting," told me the day, and he said "We will put that vote through." After the meeting Mr. Mellen called me up, and he said "I want to see you in a day or two," he said "We didn't put that through." I said "Mr. Mellen

that is very queer." "Well," he said, "it is, but," he said "we have a very peculiar board," he said "We have a lot of fellows in our board that come from the East, that think that"—

Mr. Faulks. Does your Honor think this is material to this case at all?

The Court. A great deal of it is not, but it is the whole conversation, and I suppose they are entitled to put in all of it; a great deal of it has no effect on this case, what kind of a board they had, and so forth.

Mr. Faulks. I do not see how the willingness of the New Haven to sell its Sound lines to Mr. Morse or anybody else, or anything that may have been said in regard to it, has any bearing on this case.

Mr. English. It doesn't, standing by itself, but then that is not all.

The Court. We will save time by letting Mr. Morse go on, I think.

A He stated that "when Mr. Morgan wants a vote put through he sits at my right, and we commence at that end of the table to ask for the yeas and nays on the question; when he don't want it put through I commence on my left; I was told to commence on my left. I commenced with the Connecticut fellows. He said they were all opposed to selling, that they had originally been connected with these steamboat lines, and when it got to Mr. Morgan he didn't want to vote for it, although he promised to, but," he said "we will bring it up again shortly."

Q So the proposition fell through, I take it?

A Yes.

Charles W. Morse, further direct.

Q Did you go on with the building of the Harvard and Yale? A I did.

Q Prior to that had you encountered, and when I say you I mean your company, encountered much competition in the freight business from the New Haven railroad? A Yes.

Q How about the competition after the Harvard and Yale were building, did it increase or decrease? A They sold us the Joy Line from New York to Boston, and as we presumed, which of course they couldn't do, they would cut out the business, and as soon as we bought they started to build three more boats for freight business.

Q When did they start to build three more boats for freight business, with reference to the building of the Harvard and Yale? A After they found out we were to put the Harvard and Yale on.

Mr. Faulks. I move that be stricken out.

The Court. Strike it out.

Q Was it before or after your discussion with Mr. Mellen about bringing the matter up in the board room of the New Haven?

Mr. Faulks. Objected to as immaterial.

The Court. There may be a coincidence of time there.

A It was after.

Q After that? A Yes.

Q After the proposition had been turned down? Did you ever have any discussion with Mr. Mellen about the building of those three freight boats by the New Haven after that board meeting? A Well, not until after the Harvard and Yale had been on the route.

Charles W. Morse, further direct.

Q *(By the Court)* What are the names of those freight boats? A Old Colony, Massachusetts and Bunker Hill.

Q Were you acquainted with those boats? A Yes.

Q What was their design at the time they were built? A Freight boats.

Q Fast or slow? A Fast.

Q Were they built with reference to convertibility, if desired, into passenger steamers? A No, they were built to try to get the freight to Boston sooner than our boats would; they were neither one thing nor the other, neither freight or passenger boats, what we call in shipping parlance morphidite.

Q Did those boats go into operation against your boats? A Yes, sir.

Q What was the effect on the competition between you? A Of course it did not affect the passenger business, but it affected the freight very materially.

Q Do you know whether the New Haven operated those boats at a profit or not?

The Court. How would he know that?

Mr. English. I do not know, I am going to find out, that is why I put the question in that way, I want to see if he knows.

Mr. Faulks. I object.

Mr. English. Your Honor must remember that Mr. Morse was very much in touch with this whole steamship business, probably no man in the United States knew so much about the ins and outs of steamships on the eastern coast as he did, and it is very possible that he can tell.

Charles W. Morse, further direct.

The Court. Do you know whether they operated at a profit or not? Yes, or no?

A Yes.

Q *(By the Court)* How do you know? A I know because the freight they carried, the price they got, and the cost to run the boats.

Q What was the fact as to whether they operated those three boats of the New Haven at a profit or loss?

Mr. Faulks. Objected to as immaterial and incompetent, and on the further ground that this witness is not shown to have had any qualifications for answering the question; he may have known in a general sort of way how much freight these boats carried, what expense they were under, and things of that kind, but he cannot know anything that would qualify him to answer this question; there may have been a great many other items entering into the question of cost of operation and receipts; he does not know whether the freight bills were collected, he does not know to what extent the boats may have met with accidents, what claims may have been paid, and a thousand and one other things; he has already said that he was engaged in a multitude of other enterprises, and any information he had on this subject was at most hearsay.

The Court. How can this witness say whether in fact the New Haven ran these boats at a profit?

Mr. English. From his knowledge of the shipping business, and the way he got it. Counsel is at liberty to cross-examine on

that if he wants to. If he does not think he is qualified to answer the question, assuming the evidence is material, it is his privilege to cross-examine and find out. He says he can answer; now counsel can find out whether he has a right to answer.

The Court. I do not think he has qualified himself to answer it yet.

Q You say you know the facts with reference to the loss to the New Haven by the operation of those three freight boats; how do you know that, what is your source of information? A Because of the cost of running boats at that speed, and those boats, to Boston; the amount of freight they carried, the amount of freight any boats would carry that size, what they could put in and take out in a day, could not be remunerative.

Mr. Faulks. I move that be stricken out

Q *(By the Court)* How much freight can they carry? A They never carry over four or five hundred tons.

Q How much could they get for that amount of freight? A They average about $2.25, or $2.00 a ton; sometimes with competition they get very much less.

Q What would it cost to operate a boat on a trip at that time, I mean one of those fast boats? A I should think it would cost from fifteen to eighteen hundred dollars a day, one of those boats.

Q Did you ever have a talk with anybody in the New Haven with reference to the operation of those ships? A Yes.

Q Who? A Mellen.

Charles W. Morse, further direct.

Q Where and when? A This was some time afterwards, I think it was 1909, I should say.

Q Did you discuss with him at that time the operation of those boats by the New Haven with reference to either making or losing money? A I did.

Q What did he say about it? A He said they lost money.

Q Did he say how much? A He said he expected to lose money.

Mr. Faulks. I ask that the last part be stricken out as not responsive.

Mr. English. It is part of the conversation, your Honor.

The Court. I will let it stand.

Q Did he say anything else in that conversation, other than the loss of money and that he expected them to lose money?

Mr. Faulks. I do not think that question is fair, your Honor. I think I should know what the conversation was about.

The Court. I will strike that question out.

Q What else was said in that conversation?

Mr. Faulks. The same objection; it is the same question.

Q About the operation of these three fast freight boats?

The Court. If anything.

A That was a question then of buying in the Harvard and Yale at about the time they were sold at auction, and he was taking half the stock.

Mr. Faulks. This conversation is not with reference to those three boats.

A Yes, sir, it is.

Q You are speaking of a time after the receivership? A Yes.

Q And about towards the close of the receivership? A Yes.

Q When there was some discussion on about the disposition of the Harvard and Yale? A Yes.

Q Was it as a part of that conversation that he discussed with you the amount of his losses in connection with the operation of the three fast freight boats? A He wanted to make up his losses on the combined freight, that they had a lot of money invested in running those boats.

Q Did he tell you at that time how much he had lost in the operation of those three boats?

Mr. Faulks. Objected to as leading.

The Court. I will admit it.

A I do not recollect of his mentioning an amount.

Q Did he say it was large or little? A He said they lost a large sum of money running those boats.

Q Did he say at that time why he had run those boats? A He said those boats had been run to destroy the Metropolitan line.

The Court. Did he put it as baldly as that? What did he say? You do not mean to say Mr. Mellen said those boats had been run to destroy the Metropolitan line, do you?

A Mr. Mellen said that the New Haven road would lose a thousand dollars a day as long as it was in existence, before they would let the Harvard and Yale run against them.

Charles W. Morse, further direct.

Q How long did your Maine Company No. 1 operate the Harvard and Yale? A They only had them a very few months before they went into receivers' hands.

Q What was the trouble that brought on the receivership? A The trouble was the—

Mr. Faulks. I object to that.

The Court. I will admit it.

Mr. Faulks. I think it calls for a conclusion on the part of this witness.

The Court. But is not this witness qualified; he was the directing head of the company, one of the directing heads, and is not he qualified to give his opinion as to what was the cause of the receivership?

Mr. Faulks. I think the proper way to do that would be to show what was the financial condition of the company, and what caused that financial condition, and we ought not to be asked to take his opinion or conclusion as to what brought it about.

The Court. I will let him tell what events led up to the appointment of the receivers, what the condition of the company was.

A In the panic of 1907 Hornblower & Weeks, of Boston, had agreed with me to finance the building of the Harvard and Yale, they said that what the First National Bank, of Boston, would not take of the notes, until the bonds were sold—

Mr. Faulks. Are we to have all this conversation, if your Honor please?

The Court. I think he is telling now what led up to the receivership; I suppose it is because they did not carry out their agreement, that is one of the causes.

Charles W. Morse, further direct.

Q Go on. A They fell down and couldn't take care of the amount of notes, under the stress of the financial conditions, in the first place; in the second place, that the government deposited all the funds for the relief of the financial situation in Mr. Morgan to distribute around to the banks as he thought best, and three or four banks that I was connected with couldn't obtain any of those funds, and did not, although they applied for them; only favored individuals or banks could get them.

Q And you were not a favored individual? A And I was not a favored individual.

Q And those two reasons you assign for the failure? A Entirely so.

Q You are familiar with the fact that the receivers operated that line? A Yes, sir.

Q And they kept up the business of the freight boats? A Yes.

Mr. Faulks. I object to that.

Mr. English. On what ground? It is leading, I admit.

Mr. Faulks. On the ground that this witness is being asked to state a mere conclusion and his opinion as to the operations of the receivers, with which he is not shown to have had anything to do.

Mr. English. I have never heard it disputed that the receivers did not operate the line.

The Court. I will strike it out.

Q Did you do anything to keep yourself informed about the operation of the line by the receivers? A Yes, sir.

Q And what did you do? A. I often saw them.

Charles W. Morse, further direct.

Q Who? A Mr. Austin, Mr. Culver and Mr. Cobb.

Q Who was the operating man of the three receivers? A Mr. Cobb did not take much active interest; he was a classmate of mine, and former governor of Maine; Mr. Austin was the man that was president of the corporation that I had been connected with; Mr. Culver was the president of the Hudson Navigation Company at that time.

Q (*By Mr. Faulks.*) Is that another one of your companies? A Yes, sir.

Q Did you see either of those gentlemen, or some of them frequently with reference to the operation of the line by them as receivers? A They often came to me, yes.

Q Did you go over figures and details with them? A Yes, sir.

Q From those conferences and the matters there submitted did you get accurate information as to the business management of these boats and whether they were successful or otherwise? A I had the receivers' reports made by the Audit Company of Buffalo, and I was looking for it yesterday; I can find it somewhere and show you what it was.

Q Were they given you by the receivers? A Yes, sir.

Q Have you any personal acquaintance with these freight boats of the Metropolitan line, ever been on them and looked them over? A Yes, sir.

Q Did you have that knowledge at the time the receivers were operating them? A Yes, sir.

Q And about the time they were sold by the receivers and transferred to this New Jersey company? A Yes, sir.

Q What was the condition of those freight boats with reference to their upkeep, and that sort of thing, at the time of the sale? A Always been in good condition, and are today.

Q What were they at that time in 1909, when they were sold? A Good condition.

Q Generally what kind of ships were they? A They were baggage freight steamers, built expressly for the business from here to Boston by Mr. Whitney.

Q Built of what? A Steel or iron.

Q Was their capacity or utility in 1909 effected by the fact that some of them were ten or fifteen years old? A An iron ship is classed for one hundred years in British Lloyds, and there has none of them lived long enough to tell what the age can be; iron ships are better than steel, but the ships have not been built long enough, the iron has not, to determine what is the age of an iron ship; 1854 was the first iron ship ever built, and she was lost within a month in Australia.

Q Were those ships seaworthy and capable of carrying the freight they were designed to carry in 1909, as compared with the time they were built? A Oh, yes; they are today.

Q Any lessening of value from a utility standpoint in 1909 over the time they were built? A Worth half a million, at least, a piece today.

Mr. Faulks. I move that be stricken out.

The Court. Yes.

Q Going back to the time of the sale were they valuable and usable ships at that time? A Why—

Q The time of the receivers' sale I mean.

A The receivers put a value on them at that time.

Mr. Faulks. That is not the question the witness is asked, if your honor please. He cannot claim he does not understand the question. He volunteers something all the time.

Mr. English. I do not think that is a fair comment.

The Court. I will strike the answer out.

Q What I want to know is whether at the time of the sale those ships had been kept up and taken care of, and were the kind of ships which could carry on the business that they had been originally designed to carry on when they were built?

Mr. Faulks. I object to that question on the ground that the witness is not shown to be in any wise qualified to answer.

Admitted.

A They were.

Q You bought and sold many ships in your time? A Yes, sir.

Q How many do you suppose? A Oh, three or four hundred, I suppose.

Q Iron steam boats? A All kinds.

Q Do you know anybody that has bought any more than you have, or sold any more? A Well, English—

Q I mean in this country. A I do not.

Q What about the Harvard and Yale at the time they were transferred by the receivers, are you familiar with their condition? A I wasn't aboard of them, but the conditions reported to me were that they were kept up in every way.

Q How long prior to that was it you had been aboard of them? A Prior to the receivers' sale?

Q Yes. That was in 1909, the evidence shows. A I was aboard of them the day before the sale, but I had not been a year before that, but the night before the sale I went over one of them.

Q What was their condition? A Very good.

Q Had their up-keep been attended to by the receivers? A Oh, yes.

Q Are you familiar with the Massachusetts and the Bunker Hill since they have been converted into passenger steamers? A Yes.

Q Ever been through them? A Yes, sir.

Q Will you state to the court a comparison between those two boats as passenger steamers, and the Harvard and Yale as passenger steamers, operating between New York and Boston? A I should compare one first and one second class.

Q Which is which? A There are only two staterooms, that is first class, on the Bunker Hill or the Massachusetts.

Q Why do you say that? A Because there are only two staterooms on them that have beds and baths, or anything of the kind, nothing but the old fashioned bunks.

Q How about Harvard and Yale, with reference to beds and baths? A They had a whole deck of them.

Q What else would you say in comparing the two sets of ships? A One is built airy and roomy, and the other built for freight; you cannot convert a freight to a passenger boat; you can convert a passenger boat to a freight boat, because freight cannot complain, but to convert a freight boat to a passenger boat you have to strip them down and build them all over again, which never has been done success-

fully, and today while they are good sea boats and good freight boats they are not of the class of the Harvard and Yale.

Q Can you say what the net income of the Harvard and Yale was during the time they operated, to your knowledge, between New York and Boston?

Mr. Faulks. Covering what period?

Q First the period when they first began to run, prior to the receivership? A They only ran about forty, fifty or sixty days in the fall.

Q Did they carry a large capacity of passengers or not? A They had a good list of passengers at all times.

Q Have you familiarity enough from going over the accounts and other information which you received from the receivers to say how they operated during the receivership?

Mr. Ward. Answer yes or no, whether you have a knowledge.

A I had a knowledge, and I had the accounts of the receivers, and I hoped to bring them here with me today but I couldn't find them, but I can find them, and I would rather submit an authorized account than to submit anything else about it.

Q Those were the figures which were given you by the receivers themselves? A The New York & Buffalo Audit Company was employed by Mr. Culver, one of the receivers, to audit the accounts for the receivers; they made an audit for the receivers when they received the property, put on the valuations and such things of the receivers, and then they made an audit after they ran a year; I had one audit, and the second one I cannot find, but I know that

I can find it, so I would rather refresh myself from that.

Q That audit was given you by the receivers? A Yes.

Q As their official statement? A Yes.

Q Speaking as of the time the receivers sold, do you know who controlled the passenger and freight traffic between New York and Boston, apart from that which was carried on by the receivers? A Yes, sir.

Q Who, or what? A New Haven Railroad.

Q Any other competitors? A None that they did not own.

Q That is what I mean, anything that they did not own? A None that they did not own.

Q You are in the ship business at the present time? A Yes.

Q And have been for the past five or six years? A More extensively in the last three years.

Q Are you able to form any judgment as to what the value of the Harvard and Yale would be as operating ships at the present time between Boston and New York, if they were here and operated? A I think so.

Q In the first place, would their run at the present time be limited to three or four months of the summer? A No, sir, they could be used on other routes.

Q Could they operate successfully between New York and Boston more months than in the summer? A I think so.

Q Why? A Because they can go through the canal now.

Q That is the Cape Cod canal? A Yes.

Q When was that opened? A This year, 1916, I would say.

Charles W. Morse, further direct.

Q And has that made any material effect on the water route between New York and Boston? A Very much.

Q How and why? A Well, it has increased the passenger business enormously, because the boats have to go into very little rough water. The rough part of the route was from Pollack Rip to Boston Light, and they avoid the worst part of that by going through the canal.

Q So that makes a long season for operation possible? A The present boats were intended and advertised that they were going to operate all the year, two months ago.

Q You mean the Massachusetts and Bunker Hill? A Yes; there was a boat sunk in the canal, the steamer Bayport, a collier, and she has obstructed the canal at the present time, and they didn't stop until that obstruction was in the canal; whether they will start as soon as that is opened I don't know.

Q What is your judgment, at the present time; would the operation of the Harvard and Yale be worth if they were operating between New York and Boston?

Mr. Faulks. I object to that on the ground that this witness is not qualified to answer the question, and on the further ground that it involves too many speculations as to the value.

Admitted.

A The Harvard and Yale couldn't be built today for less than a million and three-quarters.

Mr. Faulks. I submit that is not an answer to this question.

Mr. English. I submit he cannot object to the answer; that is my function.

The Court. He cannot object to it on the ground that it is immaterial and irrelevant.

Mr. Faulks. I can and do object to the repeated volunteering of this witness to things about which he is not interrogated.

Q (Question read.) Answer the question as it is put, if you will, and then I will ask you to state why you answer that way. A From a million and three-quarters to two million dollars, and above, what they would cost to build.

Q Why do you say that? A Because you couldn't build them for that.

Q When you say they would be worth that money a piece do you mean net or gross?

The Court. I do not understand that.

Q Oh, you are talking about the value of the ships? A Yes.

Q Oh, I see. You mean to replace them now it would cost a million and three-quarters to two millions? A Yes.

Q Because of the increased cost of material and labor? A Yes.

Q What would they be worth as an operating proposition between New York and Boston to the Metropolitan line? A They would be worth that cost.

Mr. Faulks. I renew my objection.

Q How much would they earn, in your judgment, if they were operated between New York and Boston at the present time? A You don't mean while the canal is blocked up?

Q I am assuming the canal is in operation and the boats could operate back and forth in the regular way. I want your judgment of what their earnings would be worth if they were permitted to operate at the present time?

Charles W. Morse, further direct.

Mr. Faulks. Gross earnings, is this?

Q Well, we will have net, if Mr. Morse can give it. A I think they would be worth fifteen to eighteen hundred dollars a day net, a piece.

Q And assuming that the Cape Cod canal was opened, would they be able to run the year round? A Yes, sir.

Q (*By the Court.*) Will you tell me where you get your figure, fifteen or eighteen hundred dollars? A The receivers in their account, if I remember right, show that the boats were earning about sixty thousand dollars net, about.

Q (*By the Court.*) On each of them? A I think that is it; that is why I want my memory chalked up by the figures.

Q (*By the Court.*) Is that the basis that you used in fixing fifteen or eighteen hundred dollars? A Yes, I take it that they would earn $60,000 a month, which is $2,000 a day, and I take that as a basis, and if that was so they would earn around fifteen to eighteen hundred dollars.

Q (*By Mr. Ward.*) Did these receivers' accounts include anything for interest or fixed charges on the investment? A I cannot say.

Q Are ships of that character available to charter at the present time? A They are not.

Q What kind of ships are available to be chartered? A Freight almost entirely now.

Q Directing your attention then to the four freight boats which this line used to own, if they were now owned by the line and available here in the East could they be chartered advantageously? A Yes, sir.

Q What have you to say as to what figures they could be chartered at?

Mr. Faulks. I object to that.

The Court. I suppose he is in the shipping business.

Mr. Faulks. Yes, but this objection goes beyond his qualifications to answer the question. It is upon the ground already argued that that evidence would be immaterial and irrelevant and incompetent to any issue under the pleadings in this case. Surely, I take it, that seven years after this sale was made these freight boats now have a particular value growing out of the war and earnings of all freight boats during these abnormal times would not be evidence in this case.

The Court. I presumed your question was directed to the Harvard and Yale and not the freight boats.

Mr. English. It was originally, but now we are talking about the freight boats.

The Court. How is it material what he can charter those freight boats at?

Mr. English. Your Honor said you thought the decree ought to speak as of the present and not of the time of the filing of the bill.

The Court. Yes, but the fraud must speak as of the time it was perpetrated.

Mr. English. If the fraud took place back there, and we are deprived now of what we would ordinarily have had except for this fraud, then I think it is material.

The Court. That is a matter of accounting.

Mr. English. May be it is a matter of accounting, but this is some evidence to show what we could do with those ships if

we had them. We say we haven't got them because of the fraud of these conspirators. If we had them we could do thus and so.

The Court. But the proof that you can charter those boats at this particular time is not proof that in 1910 the directors of the company committed a fraud.

Mr. English. Oh, I appreciate that; I am not pretending it is. My thought is that if in 1910 they did commit fraud, and if as a result of that fraud they deprived us of those boats, and if, except as a result of that fraud, we had those boats and could use them and make money by them we ought to be able to show that. I do not intend to show fraud in 1910, but your Honor is asked to investigate the situation as we are now doing, and to say whether or not in your judgment a receiver ought not to be appointed to investigate the situation and see whether these ships, if they were back here in this company that it would be better off than it now is, because the contention of course is that this was done in the interest of the company—the answer says so. Now, is it not material to your Honor, in passing on that question, to know what this company could do with those ships if they had them, so as to enable you to say whether you ought to appoint receivers to take proper steps to get the ships back, and what benefit would result to the company. Why should the receivers go to the trouble of getting them back if it is to do no good, whereas if the evidence shows it would do good is it not a question which your Honor

should consider. I do not think it proves fraud in 1910.

The Court. Upon that theory I will admit it for what it is worth.

Mr. Faulks. There is no request made for the return of those boats, either through receivership or otherwise; the request is strictly limited to the return of the Yale and Harvard, and if a receiver be appointed it is that he investigate the condition of the company, and if it be found insolvent that it be wound up. No suggestion that those boats should be returned, and as I have said, no claim made that the consideration is unfair.

The Court. I will admit it.

Q (Question read.) I am speaking of the freight boats. A I sold a boat—

Mr. Faulks. I object to that volunteered statement.

The Court. I strike it out.

Q Answer the question first and then I will ask you to explain why you answer that way. (Question read.) If those freight boats were in the possession of this company and available could they be operated at the present time? A Yes.

Q Why do you say that? A Because I chartered one yesterday.

Q You mean it is being done all the time? A Yes.

Q There is a market for chartered vessels? A Yes.

Q At what prices, with reference to the size and capacity of these freight boats which you say you are familiar?

Charles W. Morse, further direct.

Mr. Faulks. I renew my objection.

Admitted.

A Prices from forty-five to fifty shillings per ton, dead weight, per month.

Q (*By the Court.*) Is that a recent condition, Mr. Morse? A Yesterday, in London.

Q (*By the Court.*) Well, I say that is a condition that has grown up, the availability of these boats for chartered purposes is a condition grown up since the war started? A Yes.

Q (*By the Court.*) Entirely due to the war? A Due to the scarcity of tonnage; the destruction of the other tonnage has put them out of business.

Mr. Faulks. I move that that evidence be stricken out.

The Court. I will let it stand for what it is worth. It certainly throws no light on what took place in 1910.

Mr. English. I don't pretend it does.

Q Do you know the H. F. Dimock? A Yes.

Q Do you know what was its capacity? A I can't say exactly, but I should say her dead weight was about twenty-five to twenty-six hundred tons.

Q What would she be worth as a chartered proposition at this time.

Mr. Faulk. I object to this entire line of testimony.

A She would be worth $12.50 a ton, about 2,500 tons.

Q Well, it would be twelve and a half times twenty-five hundred? A Yes.

Q What is the capacity of the H. Winter? A They are all about the same.

Q All about the same? A Yes.

Q All be worth about the same amount? A Yes.

Q That is so much per ton; do you mean that would be an average of every day? A That is per ton, let me see, that is per shillings per ton per month.

Q Per month? A Per month.

Q Twelve and a half dollars per ton? A Yes.

Q Per month? A Yes.

Q And we can figure out mathematically what that would be worth? A Twenty-five hundred times that per month.

Q Twenty-five hundred times that per month would be the earning value of those ships at the present time as an operating proposition? A Yes, sir.

Q What have you to say with reference to the freight rates between New York and Boston, as compared to what they were back when you operated before the receivership? A Well, we used to freight coal from here to Boston for fifty cents a ton.

Q What is being charged now? A Then we had what we call the National bill of lading, which gave one hundred and fifty tons a day, and the same to discharge, and four or five days to load; we have absolutely running twenty-five hundred tons at $1.25, and five days for loading and discharging, which is as good as $2.50 a ton under the old charter.

Q Would you say practically it had gone up from fifty cents to $2.50? A To two dollars, I would say, at least.

Q That is the practical result of it? A Yes, sir.

Charles W. Morse, further direct.

Mr. Ward. I submit this testimony should be subject to the same limitation as the testimony in reference to values.

The Court. It is.

Q Is that general increase true of other classes of freight besides coal? A I do not carry any other freight from here to Boston.

Q That is what they carry? A No, I say I do not charter any other freight.

Q Well, from your knowledge of the shipping business have rates on other classes of freight gone up between those two ports? A Unfortunately I think the Interstate Commerce regulates the price of true bills of lading, and I do not think the steamship companies can put it up.

Q Well, the Commerce Commission has permitted advances? A Oh, they are so slight compared to the others it is hardly worth discussion.

Q You told us of a conversation you had or conversations you had with Mr. Mellen at the time the Harvard and Yale were being built, and another conversation which you had about the time of the receivers' sales; did you ever have any other conversation with him in reference to the disposition or competition of those boats? A I do not recall any just now.

Q Have you any knowledge of the wharves at Boston at which those boats docked? A Yes, sir.

Q What wharves were they? A Union Wharf was the one that the Metropolitan owned.

Q Do you know anything about the India Wharf? A That is one they leased.

Charles W. Morse, further direct.

Q At the time you acquired the Metropolitan Company line did it own that Union Wharf, or did you acquire it afterward? A There was a peculiar condition about that.

Mr. Faulks. Cannot that question be answered yes or no?

The Court. Can you answer that yes or no.

A I do not think it will affect either one if I explain to them why, I think it would be entirely harmless.

Mr. Faulks. I still maintain my objection.

Mr. English. I think he is entitled to answer the question in his own way, it is a perfectly proper question.

A Mr. Whitney gave me a list of the property, and he said they didn't owe the bill; I hadn't obtained possession but a little while before I noticed there were five hundred thousand dollars worth of notes, or four hundred and seventy-five I think, and I at once called it to his attention; he said "I forgot, Mr. Morse, the Union Wharf which I bought myself should be included, and then the $457,000 of notes should be included; you can have the property without the wharf or with the wharf, just as you have a mind to take"; he said "There is equity in the wharf of three or four hundred thousand dollars, but" he said "I would like to have it," he said "it belongs to the company, because I have given their notes for it," and I took the equity and assumed the notes.

Mr. Faulks. I move that be stricken out, and particularly the portion of the alleged remarks of Mr. Whitney to this witness as to the value of the equity in the wharf.

The Court. I will strike that out.

Mr. English. Strike out Mr. Whitney's remarks about that?

The Court. As to the equity.

Q Have you any knowledge of your own, judgment of your own as to the value of that wharf?

Mr. Faulks. I object to that.

The Court. I will exclude that.

Mr. English. Whether he has any knowledge about it?

The Court. He can answer yes or no.

Mr. English. That is only preliminary to the next question.

The Court. I will exclude the next question. How is he qualified to express an opinion?

Mr. English. We can find out.

Q What about the India Wharf, did you lease that, you say? A The company leased that.

Q Where did the Harvard and Yale tie up in Boston? A India Wharf, I think.

Q What was the Union Wharf used for? A Leased it to other companies, and Mr. Whitney was improving it at the time it was sold.

Q After you acquired it you turned around and leased it? A No, it was leased before we acquired it.

Q And you acquired it subject to the lease? A Yes.

Q Do you know at what it was leased?

Mr. Faulks. I object to that.

The Court. I will admit it if he knows.

Mr. Faulks. You mean in 1905, your Honor?

Charles W. Morse, further direct.

Mr. English. I was going to bring it down to a more recent time, but I suppose the question fairly relates to that; the time he bought it he bought it subject to lease.

The Court. I will exclude that.

Q Was it a long time lease? A I think there were several leases on it; one of them that I happen to know was to the Kennebec Division of the Eastern Steamship Company, which we were interested in; but there was a large warehouse on it, and several other things that I haven't looked it up and am not conversant today to tell you what they were.

Q But it was bringing in an income as a leased proposition, is that it? A Yes.

Q You took it both subject to the lien of the bond and mortgage, whatever it was, notes, and also subject to the benefit of the leases, whatever they were? A Yes.

Mr. Faulks. Talking about Union Wharf or India?

Q About Union Wharf. A Union Wharf.

Q Union Wharf you are talking about? A Yes.

Mr. English. He says he leased the India Wharf to tie his boats up to, but he owned the Union Wharf, and that was rented out at the time he got hold of it.

Q What is your personal interest, I mean your personal financial interest in this suit we are now in? A $25,000.

Q Represented by what? A The ten year notes.

Q Those ten year unsecured notes? A Yes.

Q You personally have $25,000 in them? A Yes.

Q Have you any other interests in it besides that personal financial interest? A Most of the money in it were friends of mine that put in it to assist me, and I have a very great interest in that way, to see that they are not harmed.

Q And their holdings are represented by what kind of security? A Ten year notes, most of them.

Q Those unsecured ten year notes? A Yes.

Q Then I suppose you have some interest as the brother of your sister who has got this stock, and also some bonds it appears? A Yes.

Q Has she any of those ten year notes? A I think not.

RECESS.

ALFRED C. GREENING, sworn.

Direct examination by Mr. English.

Q I think you live in Montclair? A I do.

Q And you are here under subpoena? A Yes, sir.

Q We asked you to produce a mortgage of which you are the trustee. Will you produce such a paper? A Yes.

Q Have you got it there? A Yes.

Q You produce a mortgage dated October 10, 1910, between the Metropolitan Steamship Company of New Jersey, one of the defendants, and yourself as trustee? A Yes.

Q Did you produce at our request a sinking fund agreement which goes along with this mortgage? A Sinking fund agreement, together with other papers attached there.

Mortgage marked Exhibit C. 188.

Q Is this the sinking fund agreement which I show you? A Yes.

Mr. English. Next I offer in evidence the so-called sinking fund agreement which is executed between the Metropolitan of New Jersey, one of the defendants, party of the first part, Alfred C. Greening, as trustee, of the second part, and the Pacific Navigation Company of the third part.

Q It was the same date as the mortgage? A Yes.

Mr. English. Dated October 10th. Will you concede that?

Mr. Faulks. That is my understanding.

Q Were bonds issued under this mortgage, Mr. Greening? A I believe so.

Q It calls for an issue of $750,000, does it not? A Yes.

Q I show you a letter dated October 12, 1910, addressed to you, apparently signed Warren D. Chase; did you receive that letter in connection with this matter? A I did.

Q And the Mr. Nicholson mentioned in that letter was treasurer of the Metropolitan Steamship Company at the time? A I don't recall whether he was treasurer at that time, I don't believe he was.

Q He became treasurer at the time you delivered the bonds to him? A I think not; I don't think he was treasurer then, although I am not positive.

Q At any rate, Mr. Nicholson gave you an order for bonds, to deliver the bonds to him? A I believe he did, yes.

Mr. English. I offer the letter in evidence. Any objection?

Mr. Faulks. No.

Marked Exhibit C. 190.

"Warren D. Chase, Attorney at Law, Hartford, Connecticut. October 12, 1910. Mr. Alfred C. Greening, President; R. K. Carter & Co., 66 Reade Street, New York City. Dear Mr. Greening: Mr. Nicholson will send you an order for the delivery to him of all the temporary bonds which you did deliver to him the other night. This is for your files and is to comply with the provisions of section one, article one, of the mortgage, which provides that you shall deliver such bonds properly certified upon written order from the treasurer of the company.

"I believe you understand that in case of inquiry of any sort or nature about these bonds or the company or your dealings or your connection you are to refer everybody simply to Mr. Nicholson as treasurer of the company and not to anyone else.

"I mention this because it is possible that reporters or other people might call upon you to get details out of curiosity. Very truly yours, Warren D. Chase."

Q So you did, pursuant to some order, deliver the bonds to Mr. Nicholson? A I did.

Q Now, I show you a letter addressed to you and apparently signed Douglas Nicholson, treasurer, dated October 10, 1910. Did you receive that letter as the formal order for the bonds which according to the letter of October 12th you apparently had already delivered to him? A Did I receive what, this letter?

Q This letter? A Yes, I received this letter.

Q And that was the formal order which was mentioned in the previous letter, was it not? A I presume so, so far as I can remember now.

Formal request to turn over bonds by Nicholson as treasurer offered in evidence and designated as Exhibit C. 191, but not marked.

Q Where did you get the moneys from that you disbursed under this sinking fund agreement, if you know? A From the Pacific Navigation Company.

Q From the Pacific Navigation Company? A Yes.

Q And did you disburse it as required by the terms of the sinking fund agreement? A I did.

Q When you got down to the last provision of this sinking fund agreement covering the disbursements of these funds, which reads as follows: "Eight. To constitute out of the balance remaining after full provision of all the purposes specified in the seven preceding clauses a sinking fund for the further equal pro rata security of holders of the said second mortgage six per cent. five year bonds of the steamship company," to whom did you pay the money which was entitled to be paid under that eighth section or provision? A The bonds to the best of my knowledge and belief were never all taken up.

Q For such as were taken up to whom did you pay the money? A For such second mortgage bonds that were taken up to whom did I pay the money?

Q Yes. A I can not tell you from memory.

Q Can you tell us from any papers you have? A Some was paid to the Connecticut Trust and Safe Deposit Company.

Q Some of it went to the Connecticut Trust and Safe Deposit Company? A In taking up second mortgage bonds, yes.

Q (*By Mr. Ward.*) Have you the amount of that payment? A Yes.

Q Give the amount and the date? A $87,-238.32.

Q And what date? A On March 15, 1916.

Q The book you are referring to is the check stub book, I take it? A Of all disbursements made in the trustee fund, some money was paid to the Pacific Company.

Q On what date and how much? A October 26, 1914, $54,159.78.

Q That was to the Pacific Company? A Pacific Company.

Q (*By Mr. Faulks.*) Is that another purchase of bonds for sinking fund purposes, was it? A Purchase of bonds for sinking fund purposes, yes, and also to the Guarantee Trust Company, on April 25, 1914, $50,125. Do you want any more?

Q You are referring now to these paid under this eighth clause of the second mortgage bonds? A Yes. Is that enough, or do you want me to go on all the way through? I don't recall any more, there might be, but I won't be positive.

Q At whose request did you make these payments? A At whose request did I make those payments?

Q Yes. A I think there was an order from the Board of Directors in each case to make the payments.

Q Didn't you make the payments by request of Mr. Chase? A I did what?

Q Take that first payment you testified to, represented by stub check ninety-six, on March 15, 1916, for $87,238.32, doesn't your check stub show that that was paid as per fund from Mr. Chase? A Per fund from Chase, that meeting had been held and proper resolution passed, copy of which would be sent to me, to take up $85,000 worth of second mortgage bonds with accrued interest, etc.

Q Go on, read the rest? A From the Pacific Company, see my letters to Chase and Connecticut Trust and Safe Deposit Company of this date.

Q So that payment went to pay bonds which were held by the Pacific Company very evidently? A I presume so.

Q And I see by the check just before you paid quite some money, $2,500 to Mr. Chase for his services, that was paid out of the sinking fund? A Paid out of the sinking fund for services.

Q (*By the Court.*) How much? A For service as treasurer.

Mr. English. $2,500.

Q Is there anything in this sinking fund agreement authorizing you to pay money to Mr. Chase as treasurer, or anybody else as treasurer? A I think you will find some either in the agreement or the mortgage, and a clause covering the right to pay the money for organization purposes, etc., I think it is there somewhere.

Q This payment was made in January, 1916; there were not any organization expenses then?

A For expenses of the organization, put it that way?

Q You mean expenses of what organization?

Mr. Faulks. Suppose you refer to paragraph two of this article one.

Q That reads, "To the payment of necessary organization expenses of the steamship company." Now what steamship company do you take it that referred to? A What steamship company?

Q Yes. A Do I take it that that referred to?

Q Yes. A The Metropolitan Steamship Company, I presume.

Q And that was not organized in 1916 or within five or six years of that? A I don't mean the Metropolitan Steamship Company.

Mr. Faulks. I object to that as immaterial. The paper is perfectly clear. It was not the expense of organizing the company.

Mr. English. It says, "Payment of necessary organization expenses of the steamship company." I presume it means expenses of organizing the company.

The Court. Either that, or it may mean payment of expenses in organization expenses.

A I had that up with my own attorneys outside of Mr. Chase and Nicholson, etc., before I was satisfied it was correct for me to pay those matters, and my attorney said yes, it was correct and proper.

Q You were advised that was expenses of the organization? A Yes.

Q Of what company? A I can't remember, I don't recall; I didn't pay any attention to it.

The Court. It must be the Metropolitan Steamship Company.

Mr. English. I am trying to find out what this witness knows.

Q When you paid Mr. Chase $2,500 for services as treasurer of the company did you think you were paying it to the Metropolitan Steamship Company? A As I recall.

Q Now, under date of November 8, 1915, by check stub No. 88 you paid the Pacific Company $11,130 as per Mr. Chase's letter of November 1, 1915, didn't you? A Paid interest on 371 second mortgage bonds due October 10, 1915, yes.

Q And that payment was made at Mr. Chase's request? A Correct.

Q And the money went to the Pacific Company? A I presume so; the checks are made payable to them, the stubs rather, prove it, cancelled checks, rather.

Q Suppose you produce that cancelled check No. 88 and let us see how it reads. Well, that is simply a check to the order of the Pacific Company and endorsed by it for deposit. I see this check is signed by Warren D. Chase, attorney? A Yes.

Q How did that come about that he was countersigning your checks as trustee? A Part of the mortgage, I believe—part of the agreement.

Q Who was it that asked you to be trustee under this mortgage? A Mr. Chase.

Q I see that you paid, or is it not true that you paid under date of June 29, 1915, by check No. 79 to Douglas Nicholson, per Chase's letter

of June 26, 1915, for legal services and disbursements, $4,211.43? A Correct.

Q Was that a part of the sinking fund arrangement that you should pay Mr. Nicholson? A I believe so.

Q That was part of it, was it? A Yes.

Q (*By Mr. Ward.*) Were these payments all out of the sinking fund, Mr. Greening?

Mr. English. He says so.

A All out of the sinking fund, out of the moneys that came to me as trustee; I can't say it was specific sinking fund, because there was certain amounts to be set aside for sinking fund.

Q I see under date of July 13, 1915, by check No. 80 you paid to Nicholas W. Bindseil $42.60 for stenographic minutes of the Morse case? A Correct.

Q Per Mr. Chase's letter? A Correct.

Q Mr. Chase authorized you to pay out of the sinking fund, moneys of the sinking fund, to the commissioner who was taking depositions in this case? A As to whether you choose to call that sinking fund, out of the moneys I held in my hands as trustee.

Q Did you hold any moneys out of your hands as trustee except as you held them under this sinking fund agreement? A No.

Q Is there anything in the sinking fund agreement to authorize you to pay out moneys to the commissioner who took depositions in this case? A I believe so.

Q You do, eh? This was dated two years before the bill was filed. Can you find anything in there that anticipates this suit? A I believe my duty as trustee was to protect the second mortgage bondholders; I was advised to that.

Q Who advised you that? A My attorney.

Q Who was your attorney? A Walter H. Dodd.

Q Where does he hold forth? A New York, 16 Broad, I think it is, or 60 Broad.

Q Do you know whether he conferred with Mr. Chase before he gave you that advice? A I doubt it, I don't remember; I know he read the mortgage very carefully and the sinking fund agreement and decided it was proper for me to pay those.

Q Well, I see a check here under date of May 5, 1915, to Messrs. Lindabury, Depue & Faulks, per Chase's letter, for services and disbursements account of the Morse suit; is there anything in this sinking fund that justifies you in paying counsel for the defense in this case? A My reply to the previous question answers that one.

Q I see another check, $423.15 to Mr. Bindseil?

The Court. Is there any necessity for going any further into that?

Mr. English. I don't suppose there is.

Q Let me ask you this question. Isn't it a fact, as appears from the notations,—these notations on this check book are in your handwriting? A I believe all of them are, most of them in my handwriting.

Q Isn't it a fact as appears from the notations on this check stub in your handwriting that almost every payment here was paid at the request of Mr. Chase or by 'phone message from him? A I couldn't answer that question without going over each individual case.

Q If that is the fact it appears here, don't it? A If it is a fact it appears there.

Check stub book which the witness produced covering check stubs numbered one to ninety-nine offered in evidence and marked Exhibit C. 192.

Q Do you know what the Pacific Company is? A Specifically, no.

Q Well, is it a corporation or partnership or what? A I don't know.

Q Do you know any of the officers of it? A In the sense of knowing them, no; I have met Captain Goodall once or twice, I believe.

Q Captain Goodall is an officer of the Pacific Company? A I think he was.

Q Can you name any other officer of that company you ever met? A I can not.

Q Is Mr. Chase an officer? A I don't know.

Q And do you know under what state the company is incorporated? A I do not.

The Court. You are inquiring now as to the Pacific Company as distinguished from the Pacific Navigation Company?

Mr. English. That is a separate corporation I now learn, yes.

Q Did you ever learn whether or not the Pacific Company owned all of those second mortgage bonds which were secured by that mortgage made to you as trustee? A I did not.

Q Do you know that as a matter of fact or don't you know? A I do not.

Q You don't know about that? A No.

Q Did you ever inquire who did own those bonds? A I don't think so, I don't recall.

Q And you never knew who owned the second mortgage bonds? A I do not.

Q Then when you made payment to the Pacific Company as the supposed holder or owner of the second mortgage bonds you did that simply because your friend Mr. Chase told you to, and not because you had any knowledge on the matter at all? A Because I was getting authority from the second mortgage bonds to do so.

Q The authority came from Mr. Chase, didn't it? A Mr. Chase, on all the payments Mr. Chase signed with me all the payments.

Q You say you paid the Pacific Company because you had authority; from whom did the authority come? A In most cases, I believe, from Mr. Chase.

Q Can you think of any case where it did not come from Mr. Chase? A I don't recall now; I won't try to answer that question.

Q Did you pay interest on these second mortgage bonds out of this fund? A I did.

Q To whom did you pay the interest? A The check book will show; I can't tell you from memory.

Q Here is the book if you want it; there it is right in front of you, just look at it. Have you a recollection of paying any money to anybody for interest on the second mortgage bond except to the Pacific Company? A I don't remember of that, I can't answer the question.

Q And the payments which you made of those interest payments were at the request or suggestion of Mr. Chase? A I can't remember that.

Q Can you remember making payments at anybody else's suggestion?

The Court. Haven't you got that in time and again, Mr. English?

Alfred C. Greening, cross.

Mr. English. I don't know; I come pretty near it, I guess.

Cross examination by Mr. Faulks.

Q Mr. Greening, how long have you known Mr. Chase? A I should say for twelve or thirteen years.

Q And what was your acquaintance with him, business acquaintance or social acquaintance? A Business acquaintance.

Q And you consented to act as trustee under this mortgage and under this sinking fund agreement at his request? A I did.

Q Did you at any time have any interest or affiliation of any kind with the New Haven Railroad Company or any of its subsidiary companies? A Never.

Q All the payments that you have made out of the moneys which came into your hands have been made on checks which were countersigned by some representative of the Metropolitan Steamship Company? A Either Mr. Nicholson or Mr. Chase.

Q And those moneys which you have paid out were all moneys which came to you from the Pacific Navigation Company under this agreement? A Yes.

Q Some of those moneys were disbursed for sinking fund purposes in payment of bonds? A Yes.

Q Do you know whether the bonds which were thus retired were retired at uniform price? A I believe so.

Q Par and interest in each case? A Par and interest in each case.

Q And what other payments you made were made in accordance with your understanding of

the requirements of the sinking fund agreement? A They were.

Q Who is this Mr. Dodd you spoke of as your attorney? A My personal attorney.

Q Why did you employ him?

Mr. English. I object to that as immaterial, why he employed him; he said he needed advice and went to Mr. Dodd.

A I didn't do it at Mr. Chase's suggestion as I recall.

Q You did it— A Simply to satisfy myself as to the correctness of my payments and that I was handling the fund properly.

Q And did you do that in connection with every payment you made, did you satisfy yourself? I don't mean did you consult with Mr. Dodd every time, but did you satisfy yourself that every payment you made was one you were warranted to make and required to make? A I did to the best of my ability.

Q Have you any other interest in the Metropolitan Steamship Company except as trustee for it under this second mortgage? A None whatever.

Q And I understand you to say that you have never had any relations whatever with the New Haven or its subsidiaries? A Never.

Re-direct examination by Mr. English.

Q Do you know Mr. Edward D. Robbins? A Have never met him but once.

Q Where did you meet him on that once? A I met him at Hartford once a few moments.

Q Who introduced you to him? A I don't remember.

Q Mr. Chase? A I don't remember.

Q Was Mr. Chase there at the time? A I couldn't say positive as to that.

Q What were you doing up in Hartford at that time? A What was I doing in Hartford at that time?

Q Yes. A If I recall correctly it was to arrange to take over some second mortgage bonds, take up some second mortgage bonds, if I recall correctly, I am not positive of that, but I think that is what it was.

Q Are they the ones that were put through the Connecticut Trust and Safe Deposit Company?

Mr. Faulks. Is that of any possible use?

A Is what the ones? I don't understand your question.

Q You say you were up there to take up some bonds; were those bonds you were up there to take up the bonds that were put through the Connecticut Safe Deposit and Trust Company? A I imagine so.

Q When these bonds were ready to take up were they filed by you or cancelled by you or what was done with them? A I think I have most of them.

Q Were they turned back to you to be cancelled or kept alive and physically retained by you, or what was the position? A I think I have them. I think they were physically retained by me.

Q And not officially cancelled? A And not officially cancelled.

Q Do you know who owns the stock of the Pacific Company? A I do not.

Re-cross examination by Mr. Faulks.

Q Mr. Greening, in connection with the execution of this sinking fund agreement did you

give any bonds for the faithful performance of your duties as trustee thereunder? A I did.

Q Was that a personal bond or surety company bond, or what? A Surety company bond.

Q And in what amount was it given? A I think it was $50,000.

Q And is that or not still in force? A No, not since the end of last year, I believe.

Q At the end of last year, you mean 1915 or 1916? A No, I think it was cancelled,—no, I think it must have been cancelled early in 1916, if I recall correctly.

Examined by the Court.

Q What is your business? A Exporter.

Examined by Mr. Ward.

Q Has the sinking fund agreement in your possession attached to it a copy of the operating agreement between the Pacific Navigation Company and the Metropolitan Steamship Company? A I think not.

Q The sinking fund agreement does refer, does it not, to an operating agreement between the steamship company and the navigation company identified therein as Exhibit A? A Yes.

Q Did you have in your possession a copy of that agreement? A I don't think I did; I don't recall it: I may have, but I doubt it.

Q Do you know whether moneys were paid by the Pacific Navigation Company to you in accordance with that operating agreement? A Yes, I think they did.

Q Do your records show in what amounts the payments were made to you by the Pacific Navigation Company? A I think there was a specific amount to be paid each month, something like $28,000, something of that sort.

Q Was that amount larger at a subsequent period? Look at the records of your office. A No, I was wrong when I said "twenty"; it was $32,916.68; that was the usual amount they paid each month.

Q Are you satisfied that was paid monthly to you? A Yes.

Q What was the form in which those payments were ordinarily made to you? A Checks; in fact, the checks were usually sent to the Guarantee Trust Company, I believe, direct, and they notified me they had received them.

Q And there deposited to your credit? A Deposited to my credit as trustee.

Re-direct examination by Mr. English.

Q Were they always prompt in their payments, the Pacific Navigation Company? A Not always.

Q Didn't they get pretty well behind sometime? A Not very much, very little.

Q Did they finally pay all that was coming to you? A I think so, yes.

Q Are you sure about it? A I couldn't be positive without looking it up, but I am reasonably positive they did.

Re-cross examination by Mr. Faulks.

Q Do you know the amount of bonds, these second mortgage bonds, which have been thus paid for through sinking funds? A I can tell by going through the check book.

Q You can't tell without doing that? A No, not without doing that, no; the majority of them were paid off, though.

CHARLES W. MORSE, resumed for
Further direct examination by Mr. English.

Q Mr. Morse, you said that you had purchased 134 shares of stock for your sister at a nominal consideration. What were the circumstances of that purchase? A Those stocks, that certificate was owned by the Hudson Navigation Company and I took it for my sister, because they had other securities which they thought the conduct of this suit would enhance in value for them, and whatever part they should pay in the prosecution of the suit I agreed to pay for these securities for her.

Q You mean those shares of stock? A Yes.

Q When did you first acquire any knowledge of the fact that the Metropolitan Steamship Company of New Jersey had sold its freight boats and had leased the Harvard and Yale to the Pacific Navigation Company?

Mr. Faulks. I object to that as immaterial. Mr. Morse is not a stockholder of our company.

The Court. I will admit it. I think that your claim may be previous. It is anticipating what the defense will be. I will admit it at this time. I think your answer sets up that Mr. Morse is the real party, doesn't it, and that Mr. Morse had full and complete knowledge.

A In the spring of 1912.

Q You have spoken of having received from the receivers of the Metropolitan Steamship Company certain reports and inventories, and what not, which had been made for them by the New York and Buffalo Audit Company. I show you here papers in a folder entitled "Metropolitan Steamship Company report and

statements prepared by the New York and Buffalo Audit Company," and at the bottom "W. T. Cobb, Calvin Austin and A. I. Culver, receivers." Are these some of the papers that you received from the receivers? A They are.

Q You spoke this morning of others. Have you got the second set here at this time? A I mislaid them somewhere.

Q I mean you haven't got them since lunch? A No; the second set. This purports to be an examination by the New York and Buffalo Audit Company as of values and assets—

Mr. Faulks. I object to the witness stating what this purports to be.

Mr. English. He is not giving any figures.

Mr. Faulks. I object until I have had an opportunity to see it.

The Court. The witness can stop where he is now.

Q Will you just state in a general way, without giving any figures, what this audit is supposed to show?

The Court. I know what it is supposed to show from what he has already said.

Q Does this relate to either the beginning or the end of the receivership? A At the beginning.

Q And the other account you spoke of related to the end, I take it? A I think the next one I mentioned related to one year's operation of the company's under the receiver, a year from that time.

Q This is the beginning? A That is the beginning.

Q Don't answer this until counsel has an opportunity to object, if they want to. Among

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these papers is there a statement of the comparative statement of valuation of property showing the appraisal value, the book valuation, and increase or decrease of the freight steamers Harvard and Yale, the lighters and car floats and the miscellaneous property of the company?

The Court. Answer that yes or no?

A Yes.

Q Is this paper which I now show you the particular paper, which is numbered page ten, which sets forth those figures? A It is.

Mr. English. I offer that in evidence.

Mr. Faulks. I object to the admission of that in evidence on the ground that it is not proven and as incompetent and immaterial if it were.

The Court. I will exclude it on the ground that it is not proven.

Mr. English. It is not proven, except it was handed to me by the receivers.

Page 10 of the paper marked 193 for identification.

Cross examination by Mr. Faulks.

Q Mr. Morse, will you please tell me again the arrangement that you have with the Hudson Navigation Company in reference to the 134 shares in the Metropolitan Steamship Company represented by the second of the two certificates which were marked in evidence while your sister was on the stand this morning, the matter that you just spoke of a moment ago? A I understand that these certificates were given to me for her in order that the Hudson Navigation Company might receiver a better value for bonds of the Metropolitan Steamship Company which

they owned. The treasurer of the Hudson Navigation Company at that time was Campbell Carrington, and he was one of the men that sold the Metropolitan out to Mr. Robbins, and he did not want to be drawn into a suit of this sort, and he turned these over to me and said, "If you will take care of the company and see that they do not have any assessment on them you can have these shares because the company will get the bentfit of the bonds which they hold if the Metropolitan Steamship Company is made to do their duty."

Q So he gave them to you? A With that understanding, and we have paid the bills of our portion, part of the litigation so far.

Q That is, the navigation company? A No, the Hudson Navigation Company has not.

Q You mean that you have? The Hudson Navigation Company have no interest in this suit, I mean no direct interest, is not deferring any of the expenses of it? A No, sir.

Q Did Mr. Carrington at that time say that he was giving you these 134 shares represented by this certificate for your sister? A He said that—I told him I wanted to have more of a showing than three shares for my sister.

Q And you had in mind that your sister, that you would institute suit against this company in the name of your sister who was then the owner of three shares of stock, and wanted her to have a larger stock ownership of record? A Yes.

Q And for that purpose Mr. Carrington gave you these 134 shares? A That and for the purpose of, as he thought, of enhancing the value of the bonds of the Metropolitan Steamship

Company which the Hudson Navigation Company then owned.

Q He gave the certificates and the shares represented thereby to you, though, rather than to your sister? A Well, this transaction was all in my sister's name and he knew it was to be.

Q Who did he give the shares to, you or your sister? A He gave them to me for my sister; I put them in her name at once.

Q He gave them to you, didn't he? A Physically, yes.

Q And the only reason they were put in your sister's name was in order that it might appear that she had a larger stock ownership than three shares? A That was one, and then the other was because his personal associations were such with Mr. Robbins that he did not feel that he could as treasurer of the Hudson Navigation Company use these for that purpose, although he wanted them to be used.

Q I understand, but that does not answer my question. (Question read.) Do you understand the question now? A Yes.

The Court. Hasn't he answered it?

He answered, "Yes" practically.

Q Did you ever send the certificate to your sister? A I don't know; I think it was taken by the lawyers at once.

Q By Mr. Littleton or someone in his office? A Yes.

Q And recorded in your sister's name? A Yes.

Q And did she know that that was done or being done? A I generally informed her, but

I doubt whether she realized whether it was or not.

Q What time was that, Mr. Morse? A The date of the certificate shows, I don't recollect.

Q It was transferred of record in a few days after the time that you got it? A Yes.

Q And were you at that time preparing to institute this suit against the company? A I presume so.

Q I don't want to go into your personal matters, Mr. Morse, any more than is absolutely necessary, but you said a moment ago that you were not advised of the sale of the freight boats until the spring of 1912. Had you been away for some time prior to that? A Yes, two years.

Q Now, you also said awhile ago that you supposed that you had in your time bought three or four hundred boats. As a matter of fact, most of those boats were bought pretty much at one time, were they not, when it might be said that you went into the steamship business on a wholesale basis? A Well, no, sir. As a young man I was a steamboat builder and a shipbuilder in Maine. All my life since I was twenty years old I have been building vessels down there.

Q You had not bought, then, very large tonnage vessels prior to approximately 1905, had you? A Yes, we were, I think, one of the largest vessel owners in Maine, but these were sailing vessels and tugboats and barges.

Q Comparatively small tonnage involved in those vessels compared with what there was in the large venture that you engaged in in about 1905? A Well, they would aggregate consider-

able tonnage, but it stretched over a longer term of years.

Q When was it that you formed what I think was known as the Consolidated Steamship Company? A Well, I hesitate to mention dates; I could find it.

Q Wasn't it about 1905 when you bought out the Whitney line? A About that time, yes.

Q And you bought out a number of steamship lines? A The Clyde, Mallory, Porto Rico and Eastern Lines, there was the Kennebec, Penobscot, Portland and St. Johns; there was about in that combination about one hundred ships.

Q How much time did you devote to the purchase of all those ships? A Well, for instance, the vessels were bought, you know, when you buy a line you might buy—the Ward Line, I think, was fourteen ships.

Q It took you about twenty minutes to buy the Ward Line, more or less? A It took longer than that to pay for it.

Q It didn't take you that long to buy the Porto Rico Line, did it? A No, that was not long.

Q Beg pardon. A No, that was not long.

Q And in fact the negotiations relating to the purchase of all those large steamship companies at that time were conducted and completed within the course of a very few days, were they not? A No, hardly that, the Clyde was first.

Q How long did that take?

Mr. English. I don't know how this is cross examination on direct. I don't think it makes any particular difference to the

issues of this case, very interesting, but I don't think it is material at all.

A For instance, the Clyde Line my negotiations were with William T. Clyde; he put a price on it and I had the boats examined; we came to terms within a very few days. The Ward Line, my negotiations were entirely with Henry P. Booth, and about the same way the Mallory Line with Henry P. Mallory, the Porto Rico Line with John E. Boling.

Q I was informed by an officer of the company that the purchase took twenty minutes, is that approximately correct? A That is hard to say; it may not be over twenty minutes negotiating, I mean to say trading, after we get down to a basis, knowing what we were doing.

Q (*By the Court.*) You bought securities? A No, bought the company. They turned over all the stock, these gentlemen owned the stock, or a large portion of it, or the principal ones, and when they sold they sold for so much money generally, take Mr. Whitney, he sold so many shares of stock basing it on the whole property for so much money; if he couldn't deliver it all he was not held to it, but he left the offer open to everybody for complete delivery.

Q You are the gentleman who started this suit and has kept it going, aren't you? A I don't take that credit altogether.

Q Very largely? A No, I don't take it very largely, all the gentlemen that put in some money to buy these long term notes got together first before I did and they urged me to do something or to find somebody to protect them.

Q Then you started the suit either at their suggestion or otherwise, didn't you? A Yes; I

furnished the complainant, my sister, as the only available one that they knew of that had securities from the beginning.

Q Have you ever furnished your sister's post office address to the company? A Never was asked, no, sir.

Q Never have done it? A No, sir.

Mr. English. I offer in evidence certified copy of the certificate of incorporation of the Eastern Steamship Corporation.

Mr. Faulks. I object to the reception of that in evidence on the same grounds I did in reference to the other matters.

The Court. Admitted.

WARREN D. CHASE, sworn.

Direct examination by Mr. English.

Q What is your business, Mr. Chase? A Business man and a lawyer.

Q What bar are you a member of? A Connecticut.

Q How long have you been a member of the bar? A Since 1903.

Q Were you in your capacity as a lawyer ever retained by the New Haven Railroad or any of its subsidiaries? A I was an assistant attorney in connection with the office of Mr. Robbins in New Haven for about two years and a half.

Q And between what periods of time were those two years and a half? A I went in there in April, 1907, and I left sometime early in the fall of 1909, although I transacted practically no business after July 1, 1909.

Q About what date in 1909 did your official connection cease? A I should think it was in

October, but I can't recollect definitely, because I was not there much after the 1st of July.

Q You know Mr. Edward D. Robbins, I presume? A I do.

Q He was your superior officer in New Haven, wasn't he? A He was.

Q And you have had more or less relations with him since, I mean since your officially leaving New Haven in October, 1909? A Before and since.

Q You know Mr. Douglas Nicholson? A I do.

Q When did you first become acquainted with him? A Oh, it must have been fifteen years ago.

Q You know Mr. McIntosh, whose testimony we read in this case? A I do.

Q How long have you known him? A I should think about the same length of time.

Q Do you know Mr. Greening, who testified here today? A Yes.

Q How long have you known him? A Ten to twelve years, I should say.

Q Do you know Mr. Edward T. Canfield? A I do.

Q Who was Mr. Canfield? A Mr. Canfield is a Hartford lawyer.

Q Do you know Mr. Everly Davis? A I do.

Q His testimony has been read in this case? A He is a New York lawyer and business man.

Q Do you know Mr. Mellen, the former president of the New Haven? A I haven't a speaking acquaintance with him; I know him by sight.

Q Do you know Mr. Birdsey E. Case? A I do.

Q What is he? A He is a Hartford lawyer.

Q Is your home in Hartford? A Yes.

Q Do you know whether Mr. Robbins knows these various gentlemen that I have just named? A He knows Birdsey Case.

Q He knows Mr. Nicholson, doesn't he? A He has come in contact with him recently, I believe.

Q Well, as recently as since 1910? A No, he didn't know him in 1910.

Q He knows Mr. Greening? A Yes, he met Mr. Greening in 1914, I think, for the first time.

Q Mr. Greening said he met him once. He knows Mr. Canfield? A Yes.

Q Did he meet those people through you? A He met Mr. Greening through me.

Q Did he meet Mr. Nicholson through you or did you meet Mr. Nicholson through Mr. Robbins? A No, I knew Mr. Nicholson for a long time before Mr. Robbins ever met him.

Q Are you acquainted with a corporation known as the Chilmark Company? A I am.

Q You caused that company to be incorporated, really, didn't you? A Yes.

Q Mr. Nicholson attended to it for you? A He did.

Q You were the instigator of the company? A I was.

Q It is already in evidence that Mr. Nicholson acquired the stock of that company in exchange for stock of the defendant Metropolitan Steamship Company. You say you now own the stock of this Chilmark Company? A I always owned it; Mr. Nicholson handled that transaction as my agent.

Q And he simply transferred the stock over to you? A It was not transferred in my name, but he organized the company for me; I was the owner of the Metropolitan Steamship Com-

pany's stock, the Metropolitan Company of New Jersey, which was acquired by the Chilmark Company.

Q And after the Chilmark Company was organized and Mr. Nicholson exchanged the stock of the Metropolitan Steamship Company of New Jersey for stock of the Chilmark Company did he have the certificate transferred to you or did he simply hold it in your name for you? A The Chilmark certificates?

Q Yes. A They were held in the name of the incorporators who he provided for that purpose.

Q Still in the name of the incorporators? A Yes.

Q Then that offer of Mr. Nicholson on the minutes of the Chilmark Company to exchange stock of the Metropolitan Company for stock of the Chilmark Company was never carried out so far as the formal records in the stock record book is concerned? A I can't tell you about that; the books will show; Mr. Nicholson handles the transaction.

Q Where are the certificates of the stock of the Chilmark Company which you say you own? A In my private safe in Hartford.

Q Are they made out in your name? A No, they are made out in the name of the incorporators.

Q Indorsed in blank? A Indorsed in blank.

Q Indorsed in blank so that you can put them on record if you want to? A Yes, New Jersey corporation the ownership passes with the delivery of the certificates.

Q You say you own stock of the Metropolitan Steamship Company? A Yes, through the Chilmark Company.

Q You own as much of the stock of the Metropolitan Steamship Company as Mr. Nicholson acquired at the time the stock was purchased from what counsel has called the McKinnon crowd? A The stock of the Metropolitan Steamship Company of New Jersey which he purchased from the Assets Realization Company was purchased by him as agent for me.

Q The Assets Realization Company are what counsel here call the McKinnon crowd? A I assume so; I haven't been present. Mr. McKinnon was president of the company, of the Assets Realization Company.

Q Mr. Nicholson appeared as a purchaser of that stock, nominal purchaser, didn't he? A Yes, he did.

Q Was that with his own money? A He obtained the money with which he purchased the securities from the Assets Realization Company; yes, it was his own money.

Q Who gave it to him? A He obtained it from Edward T. Canfield, to whom he sold the evidences of indebtedness of the Metropolitan Steamship Company of New Jersey that he had previously purchased.

Q (*By the Court.*) You say he obtained it from Canfield; I would like to know what the witness was going to say there, to whom? A To whom? That is Nicholson sold all the evidences of indebtedness of the Metropolitan Steamship Company of New Jersey that he had purchased from the Assets Realization Company.

Q (*By the Court.*) You mean including the stock? A No, he did not include the stock, the evidences of indebtedness.

Q You mean the bonds, first mortgage bonds and the ten year notes and the two year notes?

A Yes, whatever they were, except the capital stock.

Q You say that he sold all but the stock to Mr. Canfield? A Yes.

Q And the money which he paid to the assets company he got from Mr. Canfield? A Yes.

Q Then he got the money before he delivered the goods? A The transactions were practically simultaneous.

Q Where did Mr. Canfield get that money from? A Mr. Canfield sold to the Metropolitan Steamship Company of Maine known as No. 2 in this case, Union Wharf and the freight boats which were formerly owned by the Metropolitan Steamship Company of New Jersey, and he obtained from them on that sale sufficient funds to use in making this purchase from Nicholson.

Q Then he sold those goods, referring to the wharf and freight boats, before he had them, didn't he? A He had contracts for the purchase of the freight boats and Union Wharf.

Q Then Nicholson got the money from Canfield and Canfield got the money from the Maine No. 2, is that right? A Yes.

Q Where did Maine No. 2 get it from? A It was the money which was paid into the Metropolitan Company of Maine No. 2 in payment of its capital stock.

Q Whose money was that? A The capital stock of the Metropolitan and Maine No. 2 was owned entirely by the New England Securities Company.

Q So the New England Securities Company paid the money to the Maine No. 2? A Yes, in payment of its capital stock.

Q You caused the New England Securities Company to be incorporated, didn't you? A I did.

Q That was the one under Mr. Everly M. Davis's office? A Yes.

Q Now, as I understand the history of this, Mr. Nicholson got the money from Mr. Canfield, Mr. Canfield got the money from Maine No. 2, Maine No. 2 got the money from the New England Securities Company, is that right? A Yes.

Q Where did the New England Securities Company get the money? A The New England Securities Company had capital stock of $1,500,000 which was paid in cash.

Q Whose money paid in cash that $1,500,000? A One of the incorporators borrowed that money temporarily on the day upon which it was paid.

Q Who was that incorporator? A I couldn't tell you which one.

Q Who were the incorporators? A There were three people who were provided by my friend Mr. Davis; I can not tell you at the present time who they were.

Q Did any one of those three hold a million and a half in their own right? A No.

Q Where did the individual incorporators of the New England Securities Company who paid the million and a half get it from? A It was obtained, as I recall it, from one of the banks; it was paid back before the close of business that day.

Q A bank is not in the habit of making a present of a million and a half; what was there to warrant the bank in giving this impecunious incorporator a million and a half? A I can't tell you; it was understood it was to be repaid before the close of business that day.

Q Repaid by whom? A I suppose it was repaid by the funds in the hands of Canfield before the close of the day's business.

Q You understand, of course, Mr. Chase, that no bank is going to put up a million and a half without knowing where it is coming from? A No, naturally not.

Q Who was the man, responsible person, who saw to it that that bank loaned this incorporator a million and a half dollars? A The financial transactions in connection with this were arranged in advance by Mr. Robbins; the details in connection with the payment in obtaining the money I handled at the time.

Q Then you are at liberty to say that the ultimate source of this money was Mr. Robbins, is that right; through his financial arrangement with the bank, is that right?

Mr. Faulks. I object to the form of the question.

The Court. I will let counsel cross examine this witness practically.

Q So your answer then is that the bank which made itself responsible for the payment of this million and a half to the incorporators of the New England Securities Company made its arrangements with Mr. Edward E. Robbins? A Mr. Robbins arranged for financial matters in advance.

Q And the ultimate source of this money then was through the arrangement with Mr. Robbins' men? A He arranged for the provision of the funds that were used that day.

Q And whatever securities or whatever it was that satisfied the bank to make this loan were provided by Mr. Robbins, is that right? A I don't know.

Q (*By the Court.*) You did not, Mr. Chase? A No, I did not.

Q (*By the Court.*) You had no financial interest in it? A I had no financial interest.

Q (*By the Court.*) You had no financial interest in the New England Securities Company, did you? A No, that was Mr. Robbins' company.

Q (*By the Court.*) You had no financial interest in the Metropolitan Steamship Company of New Jersey, did you? A Except that I became the owner of capital stock as part of my compensation.

Q (*By the Court.*) As compensation? A In handling this transaction.

Q (*By the Court.*) In handling this transaction for Mr. Robbins? A Yes.

Q (*By the Court.*) And that is the only consideration that you paid for this stock of the Chilmark Company which you now have? A Yes, that is true.

Q And you have had that stock transferred to you because Mr. Robbins said you might, is that it? A The arrangements into which we entered in the beginning taking up these negotiations for the Assets Realization Company provided for that.

Q In other words, Mr. Robbins said you could have that stock? A Yes, I was to receive that as a part of the compensation for handling this matter.

Q Did you receive any cash compensation besides the compensation represented by that stock? A In connection with the Metropolitan Steamship Company of Maine and the New England Securities Company I have been compensated at various times and different amounts.

Q You have been paid money as treasurer of the Metropolitan of New Jersey, haven't you?

A Yes, that came through the company for services rendered to it.

Q The others came through Mr. Robbins? A Either from him or by his direction, or both.

Q He was the source of it, so to speak? A Well, those companies belonged to him.

Q Now, what bank was it that made this original loan which went through these various ramifications and fetched up through Mr. Nicholson in the payment to the Assets Realization Company? A I can't recall which one did; the details of that have gone from me; there were several banks that were connected with the transactions upon that day.

Q Was it the Farmers Loan and Trust Company? Does that come back to you now? A I have seen that name mentioned, but I don't recall that I was there that day.

Q Do you know what securities the Farmers Loan and Trust or whatever bank it was, accepted in consideration of the paying of this large sum of money? A I don't know that the Farmers Loan and Trust Company made any such payment?

Q Do you know what consideration the bank which paid the million and a half dollars received to induce it to make the loan? A No, I do not.

Q Did you ever hear or don't you now remember? A I don't think I ever knew, because the sum was put back at the close of the day's business.

Q You have been present at the taking of depositions in this case from time to time, haven't you? A I think I was only present at one in New Haven.

Q Never since? A I don't think I have been present on any other.

Q Have you read any of the depositions in this case? A Yes, one.

Q Which one? A Captain Goodall's.

Q He didn't testify in this case. A Then I haven't read anything in this case.

Q You testified at the trial before the United States District Court in New York in the criminal suit of the United States against Rockefeller and others? A I did.

Q What you might call the New Haven directors' trial? A Yes.

Q In that suit weren't you asked this question, "$1,500,000 of the money of the $3,000,000 that went into the treasury of the New England Securities Company was furnished by the Billard Company," and didn't you answer, "The Billard Company loaned one million and a half to the New England Securities Company?" A I presume I did; that was the fact.

Q Does it come back to your mind now then what was the source of this money as the payment from the bank? A You haven't asked about that; you were asking about the funds used in the payment of the capital stock of the New England Securities Company; this was another transaction.

Q In view of what I read you now can you undertake to say what securities went to the bank which loaned the million and a half dollars? A Loaned the million and a half dollars to whom?

Q Which went to the New England Securities Company? A The New England Securities Company itself borrowed $1,500,000 in addition to the sum of $1,500,000 that was paid in for its capital stock.

Q I started out to ask you about the money which was paid nominally by Mr. Nicholson on the purchase of those securities, and what not, from the Assets Realization Company, do you remember? A Yes.

Q And you said a million and a half dollars which Mr. Nicholson got from Mr. Canfield which Mr. Canfield got from the New England Securities Company? A No.

Q From the Maine Company No. 2? A Yes.

Q Which the Maine Company got from the New England Securities Company? A Yes.

Q And which the New England Securities Company got from some bank, is that what you said? A I testified that $1,500,000 which was paid in to buy the capital stock of the New England Securities Company was obtained from some bank.

Q All right, I understand that; now, that is the sum of money I am talking about and that is the money which I understand you testify eventually went to the Assets Realization Company, is that right? A I didn't testify to that.

Q Do you testify to that now? A It is impossible to tell which $1,500,000 went eventually to the Assets Realization Company. Mr. Canfield had $3,000,000.

Q Where did Mr. Canfield get his $3,000,000 from? A From the Metropolitan Steamship Company of Maine No. 2.

Q Where did the Maine Company No. 2 get this $3,000,000 from? A It received it from the New England Securities Company in payment of its capital stock.

Q Where did the New England Securities Company get this $3,000,000 from? A $1,500,000 it received for capital stock and $1,500,000 it borrowed.

Q $1,500,000 it received in payment of capital stock from some bank in New York which loaned the money? A Yes.

Q And that loan was arranged by Mr. Robbins? A Yes.

Q I want to direct you to that particular $1,500,000; isn't it a fact that the $1,500,000 was loaned by that bank on the securities of the Billard Company? A I don't know.

Q (*By the Court.*) Is it a fact and do you remember that one $1,500,000 was obtained by the New England Securities Company from the Billard Company for which a note from the Billard Company was given for $1,500,000? A Yes, but that was not the money that was used in payment for its capital stock.

Q (*By the Court.*) Isn't it a fact, that there never was but one $1,500,000, although the records show two $1,500,000 it is really the same $1,500,000 that is going through several bank accounts? A No, I don't think so, there was deposit against which every check was drawn; of course, I have no recollection as to details, but I know everything was paid in cash.

Q The same check was deposited twice in the same bank on the same morning, practically the same amount? A I don't see how it could have been.

Q Don't the records show that as a matter of fact? A Not that I know of.

Q One $1,500,000, whichever it was, did come from a bank on the faith of security in the Billard Company, is that right? A $1,500,000 was borrowed by the New England Securities Company from the Billard Company and the New England Securities Company put up as collateral the stock of the Metropolitan Steamship Company of Maine No. 2.

Q And those Billard Securities went to the bank which loaned the money? A They went to the Billard Company?

Q (*By the Court.*) Can you explain how it is that although this transaction took place in March, 1910, the first note that can be found to the Billard Company is dated sometime in 1911? A I don't recall the details now, but I think it was a renewal note.

Q (*By the Court.*) There was an original note and you think this was renewal A Yes, sir, that is my impression.

Q You said a moment ago that some company borrowed a million and a half on stock, that is the other million and a half you are talking about? A I said the New England Securities Company borrowed a million and a half and put up its capital stock in the Metropolitan Steamship Company of Maine No. 2 as collateral for that loan.

Q Borrowed that money from the Maine No. 2? A No.

Q Put up the stock of the Maine No. 2? A Put up the stock of the Maine No. 2 as collateral.

Q Where did they get the money to buy the stock from of Maine No. 2? A As I testified before $1,500,000 it received in payment of its capital stock and $1,500,000 was borrowed, so it had three million dollars for which to pay for the capital stock of the Metropolitan of Maine No. 2.

Q Come back to what I asked you before. Whose money was it that paid for that stock million and a half dollars? A Paid for which stock?

Q Of the New England Securities Company? A As I say, that was borrowed temporarily

either by or on behalf of one of the incorporators.

Q We have already taken care of that; that was the money that was loaned by the New York bank on securities of the Billard Company? A Not at all; the money which was obtained from the Billard Company was a loan of $1,500,000 through the New England Securities Company and the New England Securities Company put up as collateral for that loan, together with its note, all of the capital stock of the Metropolitan Steamship Company No. 2, amounting to $3,000,000.

Q Which company was it that first had in actual cash $3,000,000? A The New England Securities Company, I should say.

Q Now, that company had actual cash of $3,000,000, did it? A It used $3,000,000 in paying—

Q I didn't ask you that. I asked you if it had in actual cash $3,000,000? A It had in actual cash or credits $3,000,000.

Q It had—that $3,000,000 seems to have been divided into two parts of $1,500,000 each? A It came from two places.

Q Now, let us take one of the two sums of $1,500,000; where did it get one of those amounts from? A One of the amounts was paid in for its capital stock, $1,500,000.

Q Paid in by whom? A Paid in by the incorporators or on their behalf, who subscribed the capital stock.

Q What I want to know is where the incorporators got that particular million and a half which they paid in for their stock? A As I said to you, it was borrowed temporarily from some bank in New York.

Q On the securities owned by the Billard Company, is that correct A No.

Q Borrowed on nothing, then? A As far as I know; I didn't arrange for the borrowing.

Q And the person who arranged that financial transaction is Edward D. Robbins? A Yes.

Q What mesmerism he exercised on that bank you don't know? A I don't know what the arrangements were except that the money was procured.

Q He made some arrangement and the result was that he got a million and a half dollars? A Yes.

Q Now I want to direct your mind to the other million and a half dollars, which is the amount to make the total $3,000,000; where did that other come from? A That was borrowed from the Billard Company by the New England Securities Company.

Q They borrowed that money direct then? A Yes.

Q Now, what was the security which it gave the Billard Company? A $3,000,000 of the capital stock of the Metropolitan Steamship Company of Maine No. 2.

Q What did the New England Securities Company pay for the capital stock of the Maine No. 2? A $3,000,000.

Q And where did it get the money from? A I don't believe I can amplify the statements I have already made. $1,500,000 came from payment, of the payment of its capital stock, and $1,500,000 was borrowed from the Billard Company.

Q (*By the Court.*) Did the New England Securities Company pay for the Metropolitan of

Maine's stock $3,000,000 or $1,500,000? A $3,000,000.

The Court. It seems to me, and I rather gather the impression from some testimony that has been given before, the records of the bank, etc., that there never was in all this transaction but $1,500,000, and that that $1,500,000 became $3,000,000 merely because it crossed deposit, is that possible?

A It does not seem to me that it is possible because the checks were drawn in full payment for the capital stock of the Metropolitan Steamship Company of Maine No. 2 for $3,000,000.

Q (*By the Court.*) Was that the purpose of using that fund in order to make the stock of the New England Company full paid stock? A Yes, and a million and a half of that was released at the end of the transactions.

Q (*By the Court.*) And left the New England Securities Company with only a debt of $1,500,000 to the Billard Company? A Yes. Billard Company.

Q (*By the Court.*) So when the transaction was over there had only been $1,500,000 actually used in essence? A Yes.

Q That is a fact, in essence only $1,500,000 was all that was used? A A million and a half was all that was permanently borrowed.

The Court. I think it is perfectly clear to me.

Q Did not that $1,500,000 which came from some bank which you don't know as a result of Mr. Robbins' negotiations go around through a series of banks and go back into that same original loaning company the same day? A I think it did.

Q So the bank which loaned that million and a half as the result of Mr. Robbins' arrangement got its money back the same day? A Yes.

Q And the real loan which was not repaid that same day was the loan which went through the agency of the Billard Company? A Which was borrowed from the Billard Company by the New England Securities.

Q (*By the Court.*) Did you have anything to do with making that loan from the Billard Company? A Making the loan by the New England Securities Company to the Billard; the details of it at the time I took care of, but it was arranged for in advance by Mr. Robbins.

Q (*By the Court.*) Who did you see in behalf of the Billard Company? A I think Mr. Billard was there at the time, although I am not positive of it, but I think so.

Q If he was there Mr. Robbins was there, too? A I don't think Mr. Robbins was there.

Q When you say, "there" where do you mean? A At the bank where the New England Securities Company handled these financial transactions.

Q Mr. Robbins had been there before? A Yes.

Q Mr. Billard was a director of the New Haven Railroad wasn't he? A He was not, I don't think he ever was.

Q Aren't you wrong on that?

The Court. If he don't know, he says he don't think so.

Q Do you know the fact that a payment of $200,000 went to the credit of the Metropolitan of Maine No. 2 on that same day, March 5, 1910? A No, I don't, but I think I heard that testified to in this New York case.

Q Where did that money come from? A I can't tell you.

Q Did Mr. Robbins arrange that, as far as you know. A If the company received it he arranged for it.

Q The records show the company did receive it? A If it did I presume I knew about it at the time, but I haven't any recollection of it now.

Q Now, you were physically present at the time this matter was closed out on March 5, 1910, weren't you? A With the Assets Realization Company, yes.

Q Mr. Nicholson was there? A Yes.

Q Mr. Robbins was there? A I don't think he was.

Q Mr. McKinnon was there? A I think so, although I am not certain.

Q Where did this take place? A I think that was in the Chase National Bank.

Q You do not want to swear Mr. Robbins was not there, do you? A No, but I don't recollect he was.

Q You do not recollect it now? A No.

Q You say Mr. Robbins was not in New York that morning? A Oh, he was there; I was in touch with him.

Q You mean when he was not there he was not physically in the room? A I don't recall; of course, I was in touch with him.

Q Did he take pains to absent himself at that particular critical moment? A Not that I know of.

Q You don't remember of his being physically in the room when the check was handed over? A No.

Q He had been there before, though? A He had been there, but I don't know how recently.

Q He had been at the bank? A Yes.

Q He was not very far away? A I was in touch with him, actually in connection with all these transactions.

Q And that was after banking hours, that Saturday afternoon? A I don't think so.

Q You haven't very much recollection about that one way or the other? A I couldn't tell the exact time; the banks close at noon on Saturday in New York.

Q Now, you were there when the money was paid and the securities were transferred, and you said you ultimately got the stock; what became of the other stock, the bonds and notes? A Mr. Canfield purchased those from Nicholson.

Q Purchased those from Nicholson under an agreement? A Yes.

Mr. English. We ask Mr. Nicholson to produce that agreement.

Q As a result of that contract, whatever it may be, Mr. Canfield got those bonds and notes that Mr. Nicholson had purchased from the Assets Company? A Yes.

Q Did Mr. Canfield obtain any real money for them? A $1,500,000.

Q That is the same old million five hundred thousand? A The same million and a half I testified before he got for them.

Q I mean he did not pay any other money for them? A No, that is all he paid Nicholson.

Q There wasn't any other money paid except that million and a half as between Nicholson and the Assets Company? A No.

Q And whoever got the stuff afterward, whether you or Canfield, or Nicholson, or who they are, got it on that original purchase nominally between Nicholson and the assets company, is that right or not? A Yes, and no, Canfield purchased some—

Mr. Faulks. I submit that the witness is entitled to answer the question.

The Court. If he says yes and no let him explain his answer, if he can.

A As far as the securities purchased by Nicholson from the Assets Realization Company was concerned, yes; as far as the securities which came into the hands of Canfield were concerned, no; because Canfield purchased something like $357,000 more first mortgage bonds from the Hudson Navigation Company.

Q I didn't mean to refer to those. I was referring simply to the money payment of securities which were supposed to come from Nicholson; Nicholson didn't put up any more? A No.

Q And Canfield didn't put up any more? A No.

Q Those securities which went from Canfield there was a million first mortgage bonds, wasn't there? A No.

Q How many? A I think there was $653,000; the million was put up by this purchase I spoke of from Canfield, $357,000.

Q From the Hudson Navigation Company? A Yes.

Q They were purchased direct by Mr. Canfield or direct by Mr. Nicholson? A They were purchased direct by Mr. Canfield as I recall it.

Q How much did he pay for them, do you know? A I don't recall.

Q It was for $200,000, wasn't it? A I should think so, judging from the quantity of bonds.

Q They went in at eighty, those bonds? A I think so.

Q How many bonds were there? A I said I thought there were 357, but I can figure it out, if there were 653, which I assume is correct, as I recall it, which were purchased by the Assets Realization Company, 347.

Q They bought them at eighty, I think the contract in evidence shows that? A Undoubtedly that will show.

Q Where did Mr. Canfield get the money which paid for those 347 bonds? A That was provided by Mr. Robbins.

Q Mr. Canfield was acting with Mr. Robbins in about the same capacity that you were? A I presume Canfield did act with Mr. Robbins in connection with that end of it, and I wanted to keep the stock which was coming to me separate and not mix myself up, except in a legal capacity, with the freight boats and first mortgage bonds and security.

Q Then Canfield in the financial transactions with Mr. Robbins became the owner of a thousand of these bonds? A Yes.

Q And those one thousand bonds which Canfield thus acquired went in payment of the freight boats and Union Wharf, did they not? A Union Wharf and freight boats were covered along with the other property of the Metropolitan Steamship Company by a mortgage.

Q I know that, I don't ask you that. A This was to secure the release of that mortgage upon those boats, and the bonds actually went to the American Trust Company as trustee under the first mortgage.

Q The bonds which went to the American Trust Company in consideration of which it released the lien of the mortgage upon the freight boats and Union Wharf were the bonds which were purchased by Mr. Canfield with the money which had been furnished on negotiations by Mr. Robbins? A The bonds which were deposited with them were the bonds which Canfield obtained.

Q Those same bonds? A Yes.

Q Now, who incorporated or caused to be incorporated this Maine No. 2, do you know? A I did; I caused it to be incorporated.

Q At the request of Mr. Robbins? A Yes.

Q For the purpose of acquiring the title to those freight boats? A And Union Wharf.

Q That was the object of the incorporation? A Yes, sir, to operate the freight line of steamers with that property.

Q Did you ever meet Captain Goodall? A Yes.

Q When did you meet him first? A I think it was in the fall of 1910, I may have met him in previous years on the coast, but I don't recall.

Q You met him as part and parcel of these general transactions? A Not with reference to the things I have been testifying; I met him in the fall of 1910 when the question came up of the Harvard and Yale.

Q Are you familiar with the fact that the Metropolitan Company of New Jersey leased to the Maine Company No. 2 which you caused to be incorporated at Mr. Robbins' request, the Harvard and Yale for the season 1910? A A contract was entered into between the two companies under which the Metropolitan of Maine

No. 2 operated on a percentage basis during that year the steamers Yale and Harvard.

Q Then you are familiar with that fact? A Yes.

Q Now, at the conclusion of that agreement or at the end of that operating season was it that you met Mr. Goodall? A Well, shortly before the end of the season.

Q That was in connection with the negotiations which ultimately led to the transfer of the Harvard and Yale to the Pacific coast? A Yes.

Q Now, who participated in those negotiations besides you and Captain Goodall? A I think Mr. McGovern and Mr. Robbins.

Q Mr. Nicholson? A And I presume Mr. Nicholson.

Q Mr. Robbins had a part in it? A Yes, Mr. Robbins was the owner of these securities.

Q And whatever you were doing you were doing at his request? A Not then, because I was the owner from March 5, 1910, of the capital stock of the Metropolitan Company of New Jersey.

Q You were somewhat beholden to Mr. Robbins for that ownership, weren't you? A I was not beholden to him; I got the capital stock in payment for services rendered at his request.

Q If it had not been for Mr. Robbins you would not have had the stock, would you? A No.

Q And of course you were not doing anything that Mr. Robbins did not want done? A I don't think that is strictly true, because we had opinions which differed.

Q Now, at the time these negotiations began had the Pacific Navigation Company been incorporated? A No, it had not.

Q That was incorporated as a part of the negotiations which then ensued? A No, that was Captain Goodall's own company; I presume it was incorporated as a result of that, after the arrangement had been made.

Q You say that was Captain Goodall's own company, what do you refer to? A I mean he with his associates on the Pacific coast contributed $250,000 to organize the Pacific Navigation Company.

Q I don't care anything about that just at this moment? What I want to know is whether at the time you and Mr. Robbins and Mr. Nicholson and the others had your negotiation with Captain Goodall and Mr. McGovern at the beginning of the negotiations was the Pacific Navigation Company, a corporation, in existence? A It was incorporated during the progress of those negotiations; it was incorporated after it had been concluded, that is, after the plan had been arranged, after the arrangements had been made which were satisfactory to all hands that the Harvard and Yale were to go to the Pacific coast that the Pacific Navigation Company was incorporated as a legal entity which would actually take over the ships; it was incorporated to provide the organization by which Captain Goodall and his associates would operate the boats on the Pacific coast as the agent of the Metropolitan Steamship Company of New Jersey.

Examined by the Court.

Q Mr. Chase, during your negotiations with Mr. Robbins did he say anything as to why, or

was it discussed as to why he caused the incorporation of a new company, the Metropolitan Steamship Company of Maine No. 2, instead of operating the old New Jersey corporation? What was his object in that? A His object as he explained it to me was this. The freight boats were then being operated by the Metropolitan Steamship Company of New Jersey, which had been incorporated only a short time before, it had never operated the steamers Yale and Harvard, they were losing money; he thought by his actions he could take those boats and make a paying proposition out of them in that he had an idea he could get traffic connection both north and south, which they were unable to obtain, and his interest was primarily there, and he wanted to get the freight boats and Union Wharf and incorporate them, and also with the object that later he might be able to dispose of them on a profitable basis to the Eastern Steamship Company which at that time was owned almost entirely by Massachusetts and Maine people. Now, he selected for the purpose of operating the Metropolitan Steamship Company of Maine No. 2 Mr. Austin, who was at that time president of the Eastern Steamship Company, and he thought Mr. Austin acting in that capacity would see the value of the boats with such traffic connections that he was able to provide and ultimately he could dispose of them on a satisfactory basis.

Q Mr. Robbins incorporated the Metropolitan Steamship Company of Maine No. 2 and took over all the property of the Metropolitan Steamship Company in New Jersey, why didn't he operate it through the Metropolitan Steamship Company of New Jersey? A Mr. Robbins, of

course, had been associated with people interested in both real estate and steamship matters for a good many years and he was a man that had been engaged in large business enterprises of his own, he was a man of considerable means.

ADJOURNED UNTIL TOMORROW.

Continuation of proceedings pursuant to the adjournment last had, on the 11th day of January, 1917, at the place and in the presence of the parties and the Court as before.

The Court. Do you want to be heard again on the question as to admitting these parties, and also as to the form of the order?

Mr. Faulks. Yes.

The Court. I will hear you now.

Mr. Faulks. If your Honor please, I at this time renew my objection to the admission of Elmer E. Newbert and Reuel J. Noyes or either of them as parties complainant in this suit, basing such objection on each of the grounds that I mentioned to your Honor at the beginning of my argument on the day the hearing was begun; and also upon the further grounds that these gentlemen, and each of them, are estopped from seeking admission as parties complainant in this suit by their laches and proven knowledge of the existence of the suit for a period of several years.

(Argument by Mr. Faulks.)

The Court. I will take your memorandum.

Mr. Ward. I renew my objection to granting the application of those creditors that they may be allowed to join in the prayer for relief against the Pacific Navigation Company. That company is an absolute stranger to these creditors, unless by reason of what is charged in the bill the company has become insolvent and is insolvent; in that case the remedy of the creditors is under the statute, and this relief which is prayed against the navigation company cannot be joined in this suit. On the other hand, if the transaction be treated as one of fraud of creditors the doctrines adverted to by Mr. Faulks are appealed to by me. They have no standing unless they have a lien upon the property of the corporation by judgment, and have issued execution and been returned *nulla bona.* There is a very substantial reason for that because the corporation ought to pay them if they are creditors and are entitled to have their debts paid at this time.

The Court. Yes, and the corporation ought not to dispose of all of its property so as to be unable to pay them when their debts become due.

Mr. Ward. Yes, that is perfectly true.

The Court. If your contention and Mr Faulks' is correct, a creditor of a corporation must stand by and see the directors of that corporation dispose of all of the property of the corporation, with no right to protect himself whatever.

Mr. Ward. If the Court please, your view on the subject suggests that there is a

distinction between a corporation and an individual in this respect. I should like an opportunity to furnish you with authorities on that.

The Court. You may.

WARREN D. CHASE, recalled.

Direct examination by Mr. English.

Q Mr. Chase, there was some talk yesterday about a contract between Mr. Nicholson and Mr. Canfield which was not physically in court; are you able to produce it now? A I handed it to you this morning.

Q I show you contract between Douglas Nicholson and Edward T. Canfield, dated March 5, 1910. That is the original paper? A Yes, that was one of them.

Mr. English. I offer it in evidence. Marked Exhibit C. 195.

Q This was the formal paper of transfer by which the securities mentioned in this exhibit C. 195 were transferred from the nominal custody of Mr. Nicholson, as the nominal purchaser from the Assets Company to Mr. Canfield; is that correct? A That was a contract by which Nicholson turned over the evidences of indebtedness of the Metropolitan of New Jersey to Canfield.

Q Those evidences of indebtedness which he turned over were those same ones which he had purchased from the Assets Company? A Yes.

Q And the evidence of indebtedness enumerated here include everything he purchased, except the shares of stock? A Yes.

Q Now, of those evidences of indebtedness here enumerated, there were six hundred and

fifty-three first mortgage bonds; he afterward added to those the three hundred and forty-seven bonds which he purchased from the Hudson Navigation Company? A Yes.

Q And they went to the American Trust Company on the release of the freight boats and the Union Wharf? A Yes; the Metropolitan Steamship Company of Maine, No. 2, deposited them.

Mr. Faulks. What do you mean when you say he added them; who added them?

Mr. English. Canfield. That was the testimony yesterday.

Q Now, besides those first mortgage bonds there were $683,895.21 of ten year notes of the Metropolitan Steamship Company; what did Mr. Canfield do with them? A They were held as agent for Mr. Robbins, that is, they were held for him as agent for Mr. Robbins, although I think I had the actual custody of them until the Pacific Company was formed, and then the Pacific Company acquired them all, all except a few, I believe one certificate for a thousand dollars didn't go in.

Q What did the Pacific Company pay to Mr. Canfield for those ten year notes? A The Pacific Company acquired second mortgage bonds of the Metropolitan Steamship Company and these ten year notes together, and a total sum of $1,100,000 was paid for the two lots of securities.

Q When you say the Pacific Company acquired second mortgage bonds, you refer to that issue of bonds of the Metropolitan Steamship Company which was secured by the second mortgage to Mr. Greening, trustee? A Yes.

Q And that issue having been made they were turned over to the Pacific Company? A The Pacific Company purchased the second mortgage bonds.

Q The entire issue? A The entire issue, and these ten year notes, at the time of its organization.

Q (*By the Court.*) Incorporated for that purpose, was it not? A Yes.

Q What did the Pacific Company pay to the Metropolitan Steamship Company for those seven hundred and fifty thousand dollars of bonds? A The Pacific Company did not pay anything directly to the Metropolitan Steamship Company of New Jersey; these securities were turned in, I think, by one of the incorporators of the Pacific Company, and they paid $1,100,000.

Q Just a moment, Mr. Chase. I show you certificate of incorporation of the Pacific Company, certified by the Secretary of State of Connecticut; that is a copy of the certificate.

The Court. When was it incorporated?

A In 1910.

Q October 11, 1910? A That purports to be, and I suppose it is.

Mr. English. I offer in evidence the certificate of incorporation of the Pacific Company, incorporated under the laws of the State of Connecticut on October 11, 1910. Marked Exhibit C. 196.

Q Are you acquainted with the incorporators named in this certificate? A If you will read them to me.

Q One John W. Joy, of Hartford? A Yes.

Q What was he? A A Hartford lawyer.

Q Friend of yours? A Yes.

Q Did you request him to act? A I did.

The Court. Why not ask him the general question. Didn't you cause the incorporation of that company for Mr. Robbins, and for the purpose of putting through this transaction?

A For Mr. Robbins and the Pacific Navigation Company, too.

Q It was at the joint request of the two of them? A Yes.

Q This Pacific Company, so to speak, was the joint product of Mr. Robbins and the Pacific Navigation Company? A Yes, they were the two parties interested.

Q You furnished the incorporators? A Yes.

Q Besides John W. Joy there was Ernest A. Haling and William G. Morgan? A Yes.

Q Lawyers in Hartford? A No, the last two aren't lawyers, they are insurance men.

Q And friends of yours I suppose? A Yes.

Q (*By the Court.*) Tell me in your own way why that company was incorporated? A The company was incorporated to carry out the arrangement that was entered into in the fall of that year between Captain Goodall and Mr. McGovern and Mr. Robbins and myself, Mr. McGovern and Captain Goodall being interested in the Pacific coast and desiring to get the boats out there for operation, and Mr. Robbins being interested as security holder in the company, myself as holder of the capital stock of the company. At that time, in the fall of 1910, the boats had been operated during the preceding summer season by the Metropolitan Steamship Co. of Maine, No. 2, on a percentage basis, that is, they were to receive fifteen per cent. for their services and everything that they furnished, and

were to turn over eighty-five per cent. of the net earnings to the Metropolitan Company of New Jersey. The earnings for that season, which were credited to us, amounted to about ninety-four thousand dollars; the net earnings upon which that division was based I believe were one hundred and ten thousand dollars, but in computing those net earnings nothing was charged for insurance or for interest either upon first mortgage bonds or otherwise, fixed charges of that nature; so that the payments which had been made meanwhile of necessity had exhausted entirely the portion of the net earnings that belonged to the Metropolitan Company of New Jersey, and the company was at that time undoubtedly insolvent. The boats had been run by Mr. Austin through that season, and they produced that amount, which was used up in the ways I have mentioned, and there were other expenses that had to be met before the boats could be put into operation for another year, if they were to be continued upon the Atlantic coast. In other words, the first of January there was fifty thousand dollars of bond interest that had to be paid upon first mortgage, and there were lay-up expenses during the winter; in the spring there were overhauling expenses and preparing the boats for sea, which would aggregate in the neighborhood of one hundred and twenty-five thousand dollars; insurance payments that would have to be met in the spring, amounting to about sixty-five thousand dollars more, and there was no possibility of getting the money to meet those obligations; the company itself had no liquid assets that amounted to anything at that time; of course they could not borrow anything unless here was some possibility of its earning sufficient

in the future to repay anything that was borrowed, and also gradually to improve its position. Under those conditions there was no possibility of doing anything on the Atlantic coast, because the boats here are profitable practically only two months in the year, July and August; those boats were practically summer hotels, they got a vacation trade, and that trade was decreasing from year to year as the automobiles developed, and as the newness of the boats and novelty wore off. Captain Goodall on the Pacific coast, as I understand it, had for some years desired to get those boats out there, he had been interested in them and tried to get them from Mr. Morse back in 1907 when they were being built, and he couldn't do so, and I believe—of course this you understand is hearsay—

Mr. English. I think even though your Honor has questioned him he ought not to state all this.

A I am leading up to the conditions that resulted in this, I understood you wanted that.

Q (*By the Court.*) All I want to know is how the Pacific Company came to be incorporated, and what part it played in the transaction? A Well, I was trying to explain.

Q (*By the Court.*) I am very much interested in what you say, but it is not responsive. A At any rate, as a result of those conditions, and as a result of the effort of Captain Goodall and Mr. McGovern, a plan was arranged; they figured that they could raise two hundred and fifty thousand dollars on the Pacific coast, and with that they could organize the Pacific Navigation Company; they needed at least one hundred thousand dollars for working capital on that coast. The requirements of the Metropolitan

Steamship Company of New Jersey at that time were about two hundred and fifty thousand dollars, if the boats were to be taken out to the Pacific coast. In other words, to meet obligations that were outstanding and due, and in order to pay for the preparation of the boats for the trip, and to take them out there and deliver them it was estimated that two hundred and fifty thousand dollars was needed. They were willing to provide one hundred and fifty thousand dollars of that, if the additional one hundred thousand dollars were provided here. And provided further if they were successful in the operation of the boats on the Pacific coast that they should have an interest in the underlying securities of the Metropolitan Company of New Jersey, which Mr. Robbins at that time owned. In other words, they were of the opinion that if they provided the ability and the organization to save the Metropolitan Company of New Jersey that they ought to share in any profits, because otherwise it probably would have to go into bankruptcy. Now, in order to accomplish that the Pacific Company was formed, and the Pacific Company had, after the payment of its capital stock—

Q (*By the Court.*) Which was supplied by whom? A It was going to get them two hundred and fifty thousand dollars in cash, because the other eight hundred and fifty thousand was simply passed around in those transactions, so that the stock might be fully paid and there might be no question of subsequent liability on the capital stock. Of that two hundred and fifty thousand dollars one hundred and fifty thousand was paid in by the Pacific Navigation Company and one hundred thousand was paid in

by Mr. Robbins. Those cash payments were represented by two hundred and fifty thousand dollars of preferred stock, of which the Pacific Navigation Company received one hundred and fifty thousand and Mr. Robbins one hundred thousand dollars. In the common stock the Pacific Navigation Company received I believe two hundred and fifty thousand, and Mr. Robbins the balance.

Q (*By the Court.*) How much was the balance? A The balance, I think, was six hundred thousand. Now those figures may not be exactly correct on the common stock, I haven't checked this information lately, but that is my recollection of it now.

Q (*By the Court.*) How much again, now Robbins got how much? A Six hundred thousand.

Q (*By the Court.*) Robbins got six hundred thousand? A And the Pacific Navigation Company two hundred and fifty thousand, that is my recollection, of the common stock.

Q (*By the Court.*) That common stock was really not paid? A Well, it was paid for in this way, by the transfer of the second mortgage bonds of the Metropolitan Steamship Company of New Jersey, and these six hundred and eighty-three thousand of ten year notes. I will give you the actual technical operation so that you will understand it. One million one hundred thousand dollars was paid in through the bank here in Hartford in cash, in payment of the capital stock. Thereafter, immediately, the company bought from, I think, one of the incorporators, or somebody who was procured to make the formal offer, seven hundred and fifty thousand dollars of the second mortgage bonds of the

Metropolitan Steamship Company of New Jersey, and about six hundred and eighty-three thousand, perhaps six hundred and eighty-two thousand of the ten year notes of the Metropolitan Company of New Jersey.

Q (*By Mr. Ward.*) Bought for how much, Mr. Chase? A And it paid for this entire lot of securities $1,100,000. Now, the person who received the money and turned in the securities paid the Metropolitan Steamship Company of New Jersey for the second mortgage bonds two hundred and fifty thousand dollars in cash, and turned in all two year notes of that company, four hundred and seventy-five thousand dollars par value, and with accumulated interest brought it up to practically five hundred thousand dollars.

Q. (*By the Court.*) Those were two year notes? A Two year notes that were dated in November, 1911.

Q (*By the Court.*) And two hundred and fifty thousand dollars? A And two hundred and fifty thousand dollars in cash.

Q (*By the Court.*) And for that they got the seven hundred and fifty— A Thousand of the second mortgage bonds. The net result was to extend for about four years the five hundred thousand dollars of two year notes of the Metropolitan Steamship Company and to provide the Metropolitan Company in addition two hundred and fifty thousand.

Q (*By the Court.*) How do you mean extend? A Because those notes were due in 1911, and the second mortgage bonds were not due until October, 1915; and it also gave the Pacific Navigation Company an interest in not only the ten year notes, but in the first place

practically in those two year notes, and afterwards in the second mortgage bonds for which they were exchanged.

Q (*By the Court.*) Well, the four hundred and seventy-five thousand of two year notes were cancelled, were they not? A Yes.

Q (*By the Court.*) That was out of an issue of how many? A Five hundred thousand; the accumulated interest on those notes amounted to about twenty-five thousand dollars more, approximately that, at the time.

Q Before I go on with this Pacific Company I want to ask you a question about—

Mr. Faulks. There was one question your Honor asked which was not answered by Mr. Chase. I do not know whether you want the information at this time or not, but that was as to where the money came from which went into the Pacific Navigation Company.

The Court. Pacific Navigation Company? No, Pacific Company.

Q (*By Mr. Ward.*) These two year notes which were turned in and cancelled were not the same as the ten year notes? A No, they were something different, and in addition to the others.

Q (*By Mr. Faulks.*) And bore interest at what rate? A I think six per cent.

Q Going back for a moment to the time when Mr. Nicholson bought the evidences of indebtedness from the assets company, you have already said that Mr. Canfield afterwards purchased from the Hudson Navigation Company three hundred and forty-seven additional bonds? A Yes, the balance to make the million.

Q You said he purchased those at eighty? A You said eighty and I assume that that is correct.

Q I said that because the contract says so. A I presume there is no question about that.

Q It was a part of the contract which was entered into with the assets company that the Hudson Navigation Company would sell those bonds at eighty, was it not? A I do not think it could be called a part of it.

Q Well, it was incorporated in the contract was it not? A Mr. McKinnon was representing four different parties and was trying to do justice to everybody, and he certainly held us at arms length.

Q Never mind that. A And the Hudson Navigation Company was only one of them; he represented the liquidating agent of the bank of North America, and the Metropolitan Steamship Company.

Q It was part of the general deal that those securities were to be obtained, wasn't it? A Well, it was arranged for at the same time.

Q It was incorporated, and the actual contract was arranged for at the same time; that is right? A It was arranged for at the same time.

Q Exhibit C. 8 in this case is a separate paper by which the Hudson Navigation Company, by which Mr. McKinnon, as president, gave to Mr. Canfield, for a ten dollar payment, the option to purchase three hundred and forty-seven bonds at a price of eight hundred dollars per bond? A Yes.

Q So we can start with the proposition that it was part of the general arrangement that those bonds were to be sold at eighty; do you

remember that a part of the property which was turned over by the assets company to Mr. Nicholson was a sum of money in cash? A Turned over to him on this contract?

Q Yes? A No, I think not, I think the contract mentions everything that was turned over.

Q Do you remember that when the control of the company was turned over by the purchaser of the stock that of course carried with it all the physical property of the company? A I think that when Mr. Nicholson—

Q Answer the question. When the majority of the stock control passed to Mr. Nicholson that carried with it the physical property of the company, did it not? A No.

Q (*By the Court.*) That is a matter of law, as to whether it did or not, is it not? A The officers were in control until afterwards.

Q, Well, I won't ask that question in that way. As a result of the purchase of these fourteen thousand and odd shares of stock by Mr. Nicholson, he or his assigns, he came into the control of the physical property of the company, did he not? A Yes.

Q Among that physical property was a sum of money or cash in bank? A I think so, whatever the bank balances were.

Q Upwards of two hundred and eighty thousand dollars, was it not? A I do not recall the amount.

Q Well, it was a large sum of money, was it not? A I should not say whether it was large or not, I do not remember the amount whatever the balances were did come into the possession of—

Q Do you remember testifying in the government suit in New York when you were asked

about this same matter? A I remember that Mr. Osborne asked me a good many questions about the financial matters.

Q And after you had been shown a memorandum you said this; referring to the previous question whether there wasn't in the bank two hundred and eighty-eight thousand dollars, you said "It doesn't refresh my recollection, but I do not dispute the fact that there was that cash there, I simply do not recall how much was there." A That is my position, I cannot remember the amount.

Q So you do remember there was a large sum of money there? A There was a quantity of money.

Mr. Faulks. He didn't say that.

The Court. He has said two or three times that he did not dispute it, and does not know.

Q Is it not a fact, Mr. Chase, that the money which went to the Hudson Navigation Company to pay for those three hundred and forty-seven bonds at eighty was that cash which was in the bank at the time the stock and the evidences of indebtedness were turned over to Mr. Nicholson? A I do not see how it could have been, because Mr. Canfield bought those bonds.

Q That does not answer the question at all. Was not the money which Mr. Canfield used to pay for those bonds the same money, no matter how he got it? A I don't know that.

Q Who does know that? A I couldn't tell you. Mr. Robbins of course arranged those things at the time. It is possible I knew then.

Q Well, if the company was in the sad financial condition that you have detailed to the Vice-

Chancellor a moment ago it must have been because that two hundred and eighty-eight thousand dollars was not available?

Mr. Faulks. I object to that statement.

A That was in the fall of 1910.

Mr. Faulks. Just a moment.

Q (Question read.) A No; whatever funds the company had were used in the payment of its indebtedness and claims which arose.

Q Well now, you say you owned the stock and you were the man who was practically in control of the company; can you tell us how that two hundred and eighty-eight thousand was paid out? A Well, it was paid out meeting the obligations of the company.

Q Can you tell what obligations there were? A Yes; there were a large quantity of outstanding bills, and all claims, and all demand notes.

Q Now the Harvard and Yale began to operate that season under a lease to the Maine No. 2? A They had an operating contract.

Q Was that arrangement so disadvantageous that the Yale and Harvard made no money for its company? A Practically so; but the arrangement was satisfactory, couldn't have been better than on a fifteen per cent. basis.

Q (*By the Court.*) Will you tell me, if you know, Mr. Chase, if it was ever discussed as to why Mr. Robbins wanted to buy into a bankrupt concern? A Why, he was interested in obtaining the freight boats and Union Wharf, because he thought that he could manage those boats profitably, and afterwards dispose of them, as he hoped, to the Eastern Steamship Company.

Q (*By the Court.*) It was not from any elymosynary interest in the stockholders of the

Metropolitan Steamship Company, was it? A No; he thought there was a business opportunity there for him to make money out of the operation of the freight boats.

Q (*By the Court.*) For himself? A For himself.

Q Didn't he know that as between the freight boats and the Harvard and Yale the paying end of the business was the Harvard and Yale? A I don't think anybody knew that.

Q You and Mr. Robbins at that time thought these freight boats were a great financial asset? A The freight boats were then being operated at a loss by the Metropolitan Steamship Company, but Mr. Robbins thought that he could utilize them in such a way, by establishing traffic connections and by giving them good management, so that they would earn him a profit, and that afterwards he would be enabled to dispose of them at a price above what they cost.

Q Mr. Robbins thought he would go into the steamship business? A Yes.

Q Between what ports? A At that time between Boston and New York.

Q Who else was operating then between Boston and New York at that time? A At that time I think the Eastern Steamship Company was, although I am not sure.

Q You won't be sure about that? A No; I am not familiar with the freight traffic situation.

Q The New England Steamship Company was operating between those ports? A It may have been.

Q And that road through stock control was owned by the New Haven, was it not?

The Court. That we know from other evidence.

Mr. Faulks. He has mentioned a company I never heard of before, he means the New England Navigation Company.

Mr. English. The New England was a subsidiary to the Navigation Company.

Q (*By the Court.*) As a part of the transaction was it considered at the beginning that the steamship lines controlled by the New York, New Haven & Hartford should also be transferred to the Eastern Steamship Company when formed? A No, I never heard that matter mentioned, I didn't know it until this case came up and I began to hear the testimony, I didn't know until then that it had been done; I thought the Eastern Steamship Company had been owned entirely in Massachusetts and Maine, practically so.

Q So Mr. Robbins was proposing to operate a steamship boat line for freight between Boston and New York? A Yes.

Q In competition with the boats operated by the New England Navigation Company? A In competition with whatever was running at the time.

Q That is what was running? A There may have been other lines, I don't know.

Q Do you think Mr. Robbins in this business deal which he thought was to his financial interest, as you said, did not carefully look into the competition he was going to meet? A Undoubtedly he analyzed the whole situation.

Q And that competition was furnished by the New England Navigation Company, was it not? A As I say, there may have been other lines, I do not know.

Q Can you think of any other line? A No, because I never was very familiar with that condition.

Q Don't you, as a well-informed citizen, if for no other reason, know that there was no other line?

The Court. I will exclude that.

Mr. Faulks. The evidence is to the contrary, the evidence in this case.

Mr. English. Well, just what?

Mr. Faulks. Well, the question is excluded.

Mr. English. But I would like counsel to answer that question.

The Court. No, I will not require counsel to.

Q Did Mr. Robbins incorporate the Maine No. 2 to carry on that business for him? A It was incorporated for that purpose.

Q For the purpose of operating the freight boats between New York and Boston? A Yes.

Q Although they had up to that time been run at a loss? A They had been run at a loss since the Metropolitan of New Jersey was incorporated.

Q And although they had to compete with the New England Navigation Company? A Whatever they had to compete with.

Q He did not in fact operate them, though, did he, between those two ports? A Why, I suppose they were operated between those two ports.

Q When he subsequently had them turned over to the Eastern Steamship corporation? A I don't know.

Q Just coming back to this purchase of those Hudson Navigation Company bonds, there were turned over to Mr. Nicholson, among other evidences of indebtedness, some demand notes, were there not, of the Metropolitan Steamship Company? A Yes.

Q To the amount of $375,923.14? A Whatever the amount is.

Q Whatever the contract is? A Whatever the contract is.

Q That is the amount stated in the contract. What did Mr. Canfield do with those demand notes? A They were paid off from time to time.

Q Paid off by whom? A By the Metropolitan Steamship Company of New Jersey.

Q Where did it get the money? A From cash which it had in its hands.

Q The cash which went to pay those demand notes was the cash which was in the bank at the time of the sale of the stock by the assets company to Mr. Nicholson, was it not?

Mr. Faulks. Objected to as immaterial.

The Court. I will admit it.

Q Was it not? A I cannot tell you what specific cash was used; of course the company was collecting some money; a portion of it undoubtedly was applied in that way.

Q When were those demand notes paid off? A I couldn't tell you the exact dates.

Q Well, as near as you can now?

The Court. Do the books show?

Mr. English. I do not know whether they show or not.

The Court. Rather than take this witness's recollection the books ought to be produced.

Mr. English. They have the books.

Mr. Faulks. The books are all in my office, if you want them brought up.

The Court. Why not look at the books and find out, rather than to take this witness' recollection?

Q The evidence in this case shows by Exhibit C. 9 that the Hudson Navigation Company received from Mr. Canfield as full price for three hundred and forty-seven first mortgage five per cent. bonds of the Metropolitan Steamship Company the sum of $280,684.45, which the exhibit recites had been delivered to Canfield, and the promise of the Navigation Company was included in the paper that on or before March 8, 1910, it would deliver the one remaining bond, by mailing it to the Second National Bank at New Haven; does that now bring to your mind the fact that the bonds were purchased before March 8th, 1910? A I presume they were, I do not recall it.

Q Does not that refresh your recollection to this extent, that the demand notes were paid off before March 8, 1910, at least to the extent of two hundred and eighty thousand dollars? A A portion of them may have been; I simply do not recall it; the books would indicate, I think.

Q It would seem quite evident from this exhibit that that must have been so.

Mr. Faulks. I object

The Court. I will exclude that. You are arguing with the witness. The witness has not testified to anything, except that he does not know.

Q Have you any knowledge, of any other source, of that money which was paid by Mr.

Canfield to the Hudson Navigation Company for those bonds? A No, I have no recollection.

Q I didn't ask you for your recollection. I asked you if you have any other knowledge, of any other source, of that money in Mr. Canfield?

Mr. Ward. You are asking for hearsay information.

Q (*By the Court.*) Do you know of any other source from which Canfield could have gotten that money? A Only that Mr. Robbins was to supply whatever was needed; I presume I knew at the time.

Q So he either got it out of that fund when the deposit which the company was taking over, or he got it from Mr. Robbins? A Yes.

Q Who was the man who owned those demand notes? A They were owned by Mr. Robbins.

Q That takes care of the demand notes. Now you have already said something in your testimony about the two year notes, which were to the amount of five hundred thousand dollars, were they not? A Yes.

Q That is what the exhibit, the Canfield contract, C. 195, shows. And those two year notes were turned over to the Pacific Company, were they not? A No.

Q What did become of them? A The ones to which you refer were turned into the Metropolitan Steamship Company of New Jersey in exchange for five hundred thousand of the second mortgage bonds.

Q When was the second mortgage bond issue made? A I think it was October 10, 1910.

Q Just about the same time? A Yes.

Q And the object of that bond issue was to furnish the money to equip the Harvard and

Yale to go to the Pacific coast, was it not? A It was to provide sufficient funds to enable the company to prepare the boats for that trip and to get them around there, and to meet other obligations.

Q So the reason of the making of that second mortgage was to finance the expedition to the Pacific coast? A That, and also to secure an extension of the time of maturity on those two year notes.

Q (*By the Court.*) Was that all of the two-year notes outstanding, or were there others outstanding? A All except one.

Q (*By the Court.*) How much was the one outstanding? A Twenty-five thousand.

Q (*By the Court.*) Twenty-five thousand dollars? A Yes.

Q (*By the Court.*) Is that still outstanding? A No, that was paid.

Q What was the object of extending the time of those two year notes ? A Because they matured November, 1911.

Q Well, this happened in 1910? A Yes, but the company was not likely to be in a position a year later to pay off five hundred thousand dollars of notes.

Q Do you think obligating itself to seven hundred and fifty thousand dollars more was going to aid it in paying off those notes? A Yes.

Q You do, all right. So the object of the second mortgage was to finance the Harvard and Yale to the Pacific coast?

Mr. Faulks. If your Honor please—

The Court. That is not quite fair, and your other question was not quite fair either, although the witness did not notice it. They were not obligating themselves to seven hun-

dred and fifty thousand more; they were obligating themselves to seven hundred and fifty thousand in exchange for a release of five hundred thousand, plus two hundred and fifty thousand in cash.

Q Were those two year notes wiped out after they were exchanged for bonds? A Yes.

Q They were cancelled? A Yes.

Q Then the practical effect of that second mortgage was to give the owner of unsecured two year notes secured second mortgage bonds, was it not?

Mr. Faulks. I object to that question; the whole transaction has been explained.

The Court. I will let him answer; it speaks for itself; that was the fact.

Q Isn't that the fact? A The holder of four hundred and seventy-five thousand of those two year notes secured an exchange therefor of four second mortgage bonds.

Q (*By the Court.*) What was that? A The holder of four hundred and seventy-five thousand of those two year notes secured an exchange therefor of second mortgage bonds.

Q So he substituted for his two year unsecured notes five per cent. secured second mortgage bonds, did he not? A The company substituted.

Q No, no?

The Court. He obtained them.

A He obtained them.

Q The holder of the two year notes, as a result of this transaction, got back into his possession five hundred thousand dollars of second mortgage bonds, did he not? A Yes.

Q Who was that man? A Mr. Robbins.

Q That left two hundred and fifty thousand of second mortgage bonds, did it not? A There was two hundred and fifty thousand in addition to the five hundred thousand.

Q What became of those? A Those were issued in exchange for cash.

Q In exchange for cash? A Yes.

Q (*By Mr. Faulks.*) At par? A At par.

Q Whose cash was exchanged for two hundred and fifty thousand of those bonds?

Mr. Faulks. That has all been covered.

A That was money that was provided—

The Court. I do not know why we need to reiterate and repeat all this, unless you expect the witness to change his testimony· he has already said one hundred thousand from Robbins and one hundred and fifty thousand from the Pacific Navigation Company.

Q Is that the way it went? A One hundred and fifty thousand from the Pacific Navigation Company, and one hundred thousand from Mr. Robbins.

Q Did the Pacific Navigation Company take one hundred and fifty thousand of those bonds? A No, but the Pacific Company, in which it was interested, had the entire issue of bonds; and perhaps I did not answer one of your other questions quite correctly in saying that Mr. Robbins was the owner of the bonds at that time; he was technically, but he had already given them this arrangement that I have talked about, a participation in the same to the Pacific Navigation Company.

Q We have got two hundred and fifty thousand which we exchanged for cash. Now, did the Pacific Navigation Company take away with them, as a result of that transaction, one hundred and fifty thousand of those bonds? A No, the Pacific Company held them, but he took the preferred stock.

Q Wait a moment. You do not have to make such long explanations. Did Mr. Robbins take away with him one hundred thousand dollars of those bonds in exchange for his cash? A No, they remained in the Pacific Company.

Q Those two hundred and fifty thousand fetched up in the Pacific Company? A Yes.

Q Who owned the stock in the Pacific Company? A Pacific Navigation Company and Mr. Robbins.

Q The stock in the Pacific Company, as appears from its charter, was divided into common and preferred? A Yes.

Q Eighty-five hundred shares of common and twenty-five hundred of preferred, according to the charter? A Yes; I have it, two hundred and fifty thousand of preferred and the balance of common.

Q And according to the charter the preferred could be retired? A Yes.

Q Mr. Goodall or the Pacific Navigation Company took the preferred stock? A They took one hundred and fifty thousand, and Mr. Robbins took one hundred thousand.

Q Who took the common stock? A That was divided, as I testified, between the two, between the Pacific Navigation Company and Mr. Robbins.

Q In what proportion? A As nearly as I can recall now the Pacific Navigation Company and Mr. Robbins.

Q In what proportion? A As nearly as I can recall now the Pacific Navigation Company received two hundred and fifty thousand, and Mr. Robbins six hundred thousand dollars.

Q So Mr. Robbins controlled the Pacific Company, did he not? A Yes.

Q Now the preferred stock of the Pacific Company has been retired? A Yes.

Q In other words, the Pacific Navigation Company have gotten their money back? A Yes, and something more.

Q What money was it that went to retire the preferred stock in the Pacific Company? A Moneys coming into the hands of the Pacific Company as interest upon the second mortgage bonds which it held, and also in payment of the principal of second mortgage bonds which were taken up by Mr. Greening from time to time under that trust agreement.

Q So the moneys which were earned by the Harvard and Yale, and which were paid to Mr. Greening under the trust agreement, were in part applied to the payment of the stock of the Pacific Navigation Company or the Pacific Company, isn't that right?

Mr. Ward. That is not fair.

Q (Question read.) A Well, it was applied in payment of—

Mr. Ward. I suggest that Mr. English ought to exercise a little more accuracy and care in framing his questions.

Mr. English. I will be guided by what the court says. If you think it is inaccurate or unfair I will reframe it.

A Reframe it according to the fact that the money which was paid to the Metropolitan under the operating agreement of the Pacific Navigation Company was the money which paid it off.

Q The money which the Harvard and Yale earned under its operating agreement was paid under the sinking fund agreement to Mr. Greening? A Yes.

Q And part of that money went to pay off the stock of the Pacific Company, did it not? A A part of it went to retire the second mortgage bonds held by the Pacific Company.

Q Which in turn had been taken for stock? A The Pacific Company used the proceeds in paying the interest upon accumulated dividends upon its preferred stock, and also in retiring it.

Q When you get through with the last analysis the money did go to pay off that stock through the medium of the payment of the bonds? A It came from that source.

Q (*By the Court.*) Has all of the stock been retired? A All of the preferred stock, yes.

Q (*By the Court.*) At how much? A I do not recall how much of the common has been retired.

Q (*By the Court.*) No, no. A Oh, two hundred and fifty thousand of the preferred.

Q (*By the Court.*) At what? A It was retired, I think, at par, it may have been at one hundred and ten. The certificate of incorporation of the company showed just what could be done.

Q (*By the Court.*) Some of the common stock has also been retired? A I think it has.

Q (*By the Court.*) You do not know how much of that? A No, I do not.

Q So that reimbursed both Mr. Robbins and the Pacific Navigation Company for the two hundred and fifty thousand dollars in cash which they had put up at the beginning of the transaction, did it not? A I think they got as much as that back and more.

Q That two hundred and fifty thousand in cash was the actual money which was used in equipping and sending the Harvard and Yale around to the Pacific coast?

Mr. Faulks. No, your honor, the evidence is to the contrary of that.

The Court. Part of it was, Mr. Faulks. The expense of preparing the Harvard and Yale was borne by the Metropolitan Steamship Company of New Jersey, and they got the money from the proceeds of those second mortgage bonds, according to this witness' testimony.

Mr. Faulks. Let the question be read. The witness has told over and over again how the two hundred and fifty thousand was used.

Q (Question read.)

The Court. I will exclude that question.

Q Some part of that two hundred and fifty thousand had been used in equipping and sending the Harvard and Yale to the Pacific Coast, had it not? A You mean of the money originally paid in?

Q Yes. A A part of it had been, yes, after it had been paid in to the treasury of the Metropolitan Steamship Company.

Q How much of it had been used? A I think the expense of getting the boats around there was about $140,000.

Q (*By Mr. Faulks.*) Did that include the preparation for going and the expense of the trip? A Yes, but it did not include payments that had to be made in the way of regular insurance and bond interest as I understand it.

Q What became of the remaining one hundred and ten thousand? A That was applied to the indebtedness of the company, and meeting expenses.

Q Now that two hundred and fifty thousand of bonds is still outstanding? A There are outstanding at the present time, I think, I think it is two hundred and eighty-six thousand.

Q (*By Mr. Faulks.*) The second mortgage bond issue of seven hundred and fifty thousand? A Yes.

Q And the Pacific Company holds those? A Yes.

Q Are they due now according to the terms? A Yes, they were due in October, 1915.

Q Interest been paid on them meanwhile? A I do not think the last payment has been made, which was due last October; that was a small amount.

Q In other words, the owner of those bonds, which is the Pacific Company, has extended the due date? A Yes, they have not pressed for payment.

Q And has Captain Goodall got any stock interest now, or his company, the Pacific Navigation Company, in the Pacific Company? A Oh, yes, in the same proportion as his original holdings of the common stock.

Q Mr. Robbins has the larger stock interest? A Yes.

Q Now the making of the second mortgage was a part of the general arrangement with

reference to the purchase of the control of the Metropolitan Company and the making of the operating agreement with the Captain Goodall company, and the sending of ships to the Pacific coast?

Mr. Faulks. I object to that question as being a misrecital of the evidence.

The Court. I will exclude the question.

Mr. English. Because it is a misrecital.

The Court. No. I am not going to state my reasons because I do not want the witness to know what my reason is.

Q The second mortgage was dated October 11, 1910, was it not? A I think so.

Q How much negotiation preceeded the making of that mortgage? A How much negotiation?

Q Yes. A With whom?

Q Anybody. A Well, those negotiations were had with me.

Q Which negotiations are you speaking of now? A With respect to the question which you asked.

Q That is between you and Greening? A Well, as far as Mr. Greening is concerned, of course the negotiations were not very lengthy.

Q He said he would be a trustee because you asked him to? A He inquired something about the details of the duties and consented.

Q Prior to the making of this mortgage on October 11, 1910, had you been in negotiation with Mr. Robbins and Captain Goodall with reference to the general matter? A Yes.

Q How long previous to the actual date of this mortgage had the matter been under discussion among those gentlemen? A I think the

general situation was under discussion about a month, possibly five weeks.

Q The negotiation which then took place in 1910 had really been begun in the fall of the previous year, had it not?

Mr. Faulks. I object to that.

The Court. I will admit it.

A No, it was not begun until some time early in September.

Q That is what I say. A 1910.

Q You said yesterday that the incorporation of the Pacific Navigation Company was a part of the general agreement which had been made about that time? A No, it wasn't a part of the general agreement, it was as a result of the plan which was arranged.

Q First they arranged the plan to take the Harvard and Yale to the Pacific coast; didn't they incorporate the Pacific Navigation Company to be the actual lessees; isn't that right? A It was the operating agent on the Pacific coast.

Mr. English. There is annexed to the bill a copy of the charter of the Pacific Navigation Company. I do not remember whether it was offered in evidence; if not, I would like to offer it in evidence.

Mr. Ward. It has been offered in evidence.

The Court. I think it has been.

Mr. English. Well, the answer admits it anyway.

Mr. Ward. It is exhibit C. 33.

Q The Pacific Navigation Company, as appears from the charter in evidence, C. 33, was

first incorporated September 29, 1910, with a capital of one hundred and twenty-five thousand dollars; do you remember that general fact? A No, I do not.

Q Do you remember that on October 3, 1910, the charter was amended so as to increase the capital stock to seven hundred and fifty thousand dollars?

Mr. Faulks. Seven hundred and fifty?

Q That is what it says. Do you remember that? A No, I have no recollection of it.

Q Did Mr. Robbins take any stock in the Pacific Navigation Company? A No, that was entirely handled by Captain Goodall.

Q Had he furnished the money already? A Yes.

Q Did you have anything to do with the incorporation of it, or did he? A I had nothing to do with it except at Captain Goodall's request, to name an attorney who could take care of it for him.

Q Who was it you named? A A man named Joiner.

Q Mortimer E. Joiner? A Yes.

Q He appears here as an incorporator? A He may, yes.

Q After the second mortgage to Mr. Greening had been made then about the same time, or contemporaneous with it, the sinking fund agreement had been entered into? A At about the same time.

Q To that sinking fund agreement the Pacific Navigation Company was a party, as well as the Metropolitan Company and Mr. Greening? A I think so, though I do not recall.

Q Well, it shows so, it is in evidence, and that appears to be the fact. The result of that sink-

ing fund agreement was that by the consent of the Metropolitan Steamship Company, which was a party to it, all of the money which was received under the operating agreement with the Pacific Navigation Company was turned over to Mr. Greening, trustee? A No, all of the moneys that are specified in that to be turned over; I do not know whether it calls for all of it or not.

Q Here is what it says, it recites the making of a mortgage to Mr. Greening, and the making of an operating agreement, then it says "whereas, in order to induce the purchase of the second mortgage six per cent. five year bonds the Steamship Company has determined to create a sinking fund for the further securing of the holders of said bonds through the application for that purpose of moneys received by the Steamship Company from the Pacific Navigation Company under the said indenture," that is, under the operating agreement? A That is the preamble.

Q I know, but doesn't that call back to your mind the fact that the moneys to be earned under the operating agreement were in turn to be paid over to Mr. Greening? A I say I don't know whether all of it was, the terms will show.

Q You were pretty close, on the inside of this company, have you any recollection to the contrary? A I think some of the first payments were not, and I think the agreement covers it, but I cannot recall; if you can show it to me.

Q The first six payments were not. A That sounds like it, the first six payments.

Q After the first six payments had been gotten by then everything went over to Mr. Greening? A Yes.

Q What became of the cash which was received on those first six payments? A I think

that cash was turned over to Bird C. Case, trustee for the Metropolitan Steamship Company of New Jersey, to be applied upon the order of its treasurer.

Q As a matter of fact it did pass through Mr. Greening's hands, did it not? A I can't tell you, it may have.

Q Do you remember how much it was? A Well, that is a matter of computation from the payments made by the Pacific Navigation Company.

Q Was it twenty odd thousand dollars? A Oh, as much as that.

Q When was that payment made, do you know? A Which?

Q To Mr. Case. A I suppose they were made from month to month, under the terms of the operating agreement.

Q After December, 1910, the first six months' payments went right to Mr. Case? A I think so.

Q Did they amount to as much as one hundred thousand dollars? A I should think it did.

Q What did Mr. Case do with that money. You say he disbursed it on the order of the treasurer? A Yes.

Q Who was the treasurer? A I think Mr. Nicholson was at that time, although he may have been succeeded.

Q What did he do with the money? A It was used in paying obligations of the Metropolitan Company.

Q Of what general kind? A Well, it had interest upon these first mortgage bonds, and other obligations, and its insurance payments. The insurance, by the way, was increased when the boats went to the Pacific coast, and amounted

to about eighty-five or ninety thousand dollars a year.

Q Cost more money to insure them on the Pacific coast than it did here in the east? A Slightly, and especially because the boats are operated there the year round.

Q Those same kind of payments which you enumerated were provided for under the sinking fund agreement; why wouldn't they be paid under it instead of having to be disbursed on the order of the treasurer? A I couldn't tell you just what the arrangements were.

Q What other use was made of that money, beside bond interest and insurance? A I cannot recall now, but if I had the books—

Q Where are the books? A Downstairs in Mr. Faulks' office.

Q Wouldn't it be advisable to get them then? A I should be glad to.

The Court. I am not going into an accounting.

Mr. Faulks. If your Honor please, we have a witness who is thoroughly familiar with the books, and he will be called.

The Court. You better postpone that until you get a witness on the stand who knows something about the books.

Mr. English. I reserve the right to go back to Mr. Chase on that if necessary.

Mr. Faulks. There is no objection, and never has been at any time, to their examining Mr. Chase with reference to the books.

The Court. I think it would be better for Mr. English to go over the books and find out what he wants, and not go over the books in open court.

Q Mr. Case was made a sort of temporary trustee for that purpose, was he? A He was made a trustee to handle some funds of the Metropolitan of New Jersey at that time.

Q Was he an officer of the Metropolitan Company? A No, he was not.

Q Was he an officer of the Pacific Company? A No.

Q Just picked up as the man to do that? A Well, originally his trusteeship began while the steamers Yale and Harvard were being prepared for the trip to the Pacific coast, and he was at that time the treasurer of the Metropolitan of Maine No. 2, and as the boats were in their hands under the operating agreement for that season he was very naturally selected to make the payments.

Q He had been made treasurer of the Maine No. 2 by Mr. Robbins, he owned the company? A Yes.

Q Previous to that hadn't been in the employ of the New Haven Railroad? A I don't think so.

Q You don't know about that? A No.

Q Then apparently this agreement with Mr. Greening began to operate, in the sense that he got money in his hands, along in October or November, 1911? A Why you can compute it as well as I can; six months afterward.

Q It appears from his check stub book, which is in evidence C. 192, that by check No. 2 he drew a check to the order of B. C. Case for $21,630.72; do you know anything about that? A I do not at the present time, but I presume the checks will indicate.

Q This stub shows "on account of libel filed against Yale and Harvard by John M. Robbins

& Co.''; do you know anything about that? A It may be, I presume the statement is correct.

Q You regarded Mr. Greening as your representative in this matter, did you not? A Well, he was selected by me to act as trustee on the second mortgage.

Q It appears from what he said yesterday that the payments made in every case were made on your telephone call or letter? A Well, in the manner that was provided; many of them were made upon resolutions, I think, of the Board of Directors.

Q Whatever it was, you seem to have been the man to press the button, so to speak, to start the thing off? A Naturally, I was in control of the Metropolitan Company.

Q As a result of that seven hundred and fifty thousand dollar mortgage the interest indebtedness of the company was somewhat increased, was it not? A Temporarily, to a slight amount; it has since been decreased.

Q Forty-five thousand a year, was it not, in the beginning? A Yes, but that was represented in part by five hundred thousand of two year notes which drew the same amount of interest.

Q Did they pay interest, those demand notes? A They weren't demand notes.

Q Two year notes? A I think they paid six per cent.

Q Then it did increase the interest indebtedness by six per cent. on two hundred and fifty thousand dollars, did it not? A Temporarily.

Q Fifteen thousand a year? A Yes.

Q It was not temporarily, if they are still outstanding. A But they are not.

Q I thought you said they were? A No, I said the second mortgage bonds had been reduced

to about two hundred and eighty-six thousand from seven hundred and fifty thousand.

Q That is what I am talking about; that is two hundred and odd thousand dollars of bonds that are still outstanding. A Isn't that less than seven hundred and fifty thousand?

Q We have gotten past that.

The Court. Now you are arguing with the witness. We know how long the bonds are outstanding, and we can figure as to whether the interest has increased or not. I do not want time wasted on that.

Q Out of this sinking fund the trustee paid for services of the officers of the Metropolitan Steamship Company? A I think so.

Q Mr. Martinsen was an officer? A In part anyhow, yes, he was for a time.

Q What was his office? A I think he was the treasurer that succeeded Nicholson.

Q He didn't have very strenuous duties to perform as treasurer, did he? A He thought so for a while.

Q Well, after Greening began to handle the money he didn't have any money to handle, did he? A The amount which came into his hands was much smaller.

Q It was practically a minimum, nothing, was it not? A No, I cannot tell you just how much; the books will indicate that, but of course it was a minimum amount.

Q You were the practical treasurer of the company, were you not? A I was the owner of the company with the exception of sixty-two thousand dollars of stock.

Q You were practically the company, were you not? A Almost, from a stockholding standpoint.

Q The other gentlemen looked to you for their instructions of what they would do? A Yes, Mr. Nicholson represented me.

Q And Mr. Hughes was president, was he not? A I think he was.

Q What valuable services did he perform requiring the payment of two hundred dollars in 1912? A I cannot remember any particular year, but there were various duties that the officers had to perform from time to time, even though they were more or less of a routine character.

Q If Mr. Hughes did anything, it was presiding, I presume, at the annual meeting? A I don't know.

Q Can you think of anything else he had to do? A Various things that came up, routine matters.

Q Specify a few? A You will have to get that from the record book and account books, I cannot recall at the present time.

Q Were there any other class of duties other than presiding at meetings? A Yes, there were matters which came up from time to time that had to be attended to.

Q Sign a paper now and then? A Claims and litigations, and so forth.

Q Sign a paper now and then? A Undoubtedly.

Q Anything else? A I say there were various things had to have attention; I couldn't tell you about them now.

Q Well, the creation of this sinking fund added to the expense, at least to the extent of having to pay Mr. Greening for his services, did it not? A He was paid out of it.

New Jersey State Library

Q Who was John C. Paige and Company? A They are insurance agents in Boston.

Q Did they insure the Harvard and Yale? A Yes.

Q Out on the Pacific coast? A Yes.

Q Do you know how much the insurance increased over what it was in the East? A I think the payments were about sixty-five thousand dollars here, but they were going to be increased the following year, and I cannot tell how much; on the Pacific coast they ran about eighty-five thousand dollars because they were operated the year round.

Q It cost twenty thousand dollars more to insure them out there? A No, because the rates advanced in the East at the same time, and how much more I do not know.

Q Didn't increase in the East twenty thousand dollars though? A I don't think so.

Q Whose money went to pay the American Trust Company for their expenses and services in connection with the retirement of the thousand of bonds which went to secure the release of the freight boats and the Union Wharf? A The American Trust Company always presented its bills to the Metropolitan of New Jersey.

Q And the money out of the sinking fund paid those bills? A I do not think the money out of the sinking fund paid those particular bills, but it may have; I do not remember when those bills were paid.

Q The New Jersey company paid it anyway? A Oh, yes.

The Court. That is already in evidence.

Q Did the Pacific Navigation Company always pay its obligations promptly under the operating agreement? A It did not in the be-

ginning, it had a hard time getting established, but afterwards became firmly established, and did take care of it.

Q When it did not what became of the interest due on the first mortgage bonds? A The interest on the first mortgage bonds has always been paid.

Q I know it has. Where did the money come from when it did not come from the Pacific Navigation Company? A I can't tell you off-hand now; it was provided of course by the Metropolitan Steamship Company of New Jersey.

Q You, as the owner of the Metropolitan of New Jersey, were interested in seeing that the bond interest was paid, were you not? A Yes.

Q Didn't you interest yourself enough to know where the money came from? A Yes.

Q Where did it come from? A I can't tell you at the present time; it came through payments that were made from time to time, from collections, and from the Pacific Navigation Company, and outside of that, I think it had no income that I now recall.

Q In 1913 did it have any source of income other than the operating agreement with the Pacific Navigation Company? A I cannot tell you off-hand, I do not recall anything at the present time.

Q Where then did it get any money in 1913 to make up this bond interest? A In 1913?

Q Yes, December, 1913. A Didn't the Pacific Navigation Company provide sufficient in that year? I cannot recall the exact times when there were shortages.

Q I call attention to the entry in Exhibit C 192, which is Mr. Greening's check stub book, "Nicholson advised by phone 12/13"—that I

take it is December, 1913,—"that Martinsen has from other funds in his hands sent the American Trust Company the difference to make up fifty thousand dollars due January first on interest on first mortgage bonds." A Yes.

Q Where did Mr. Martinsen get those other funds? A I couldn't tell you now, but the books will show. There were also some funds that the company had that were outside of Mr. Greening's hands.

Q Was that financing arranged by Mr. Robbins like some other financing had been? A No, not that I recall, of that stock. If you can give me any particular instance, or anything to refresh my memory, I may be able to tell you something more definite.

Q I cannot give you anything more than in this entry of Mr. Greening's. A I do not recall at the present time of any borrowings by the Metropolitan Steamship Company after the boats went out to the coast until about a year ago, when I temporarily borrowed about fifty thousand dollars.

Q Well, apparently some good friend came to the rescue when the Pacific Navigation Company fell down and the bond interest came due.

Mr. Faulks. I object; that is not the fact.

The Court. I will exclude the question.

Q Are you aware of a payment which was made by Mr. Greening in November, 1914, to Patterson, Teele & Dennis? A I do not recall the particular item, but I remember the money was paid to them.

Q You authorized the payment to them? A I suppose I did.

Q Two thousand dollars? A We paid them more than that.

Q Do you remember what it was for? A Accountants.

Q For what purpose? A For taking care of the books and preparing statements and tabulations, income tax returns, and so forth.

Q Anything else? A No, all in connection with the accounts.

Q Anything to do with this suit? A What time was this?

Q This is October 19, 1914. A It may be that at that time they were preparing an audit for this suit, I cannot tell.

Q To qualify themselves to testify in this suit?

Mr. Faulks. Objected to as immaterial.

The Court. Suppose they did; your suit is against the corporation.

Mr. English. I know it is, but it is a question whether the sinking fund agreement has been preserved.

Mr. Faulks. I do not know what interest Mr. English's clients have in the sinking fund agreement. If moneys had been expended for proper corporate purposes why that is all that is of any interest to anybody.

Q Mr. Greening said yesterday that he consulted independent counsel about the interpretation of this sinking fund agreement; did you understand that was at his expense or yours? A I do not know that I had any understanding concerning it, although I believe I instructed him to when he raised the question.

Q You instructed him to get independent counsel? A Oh, he doubted my legal opinion, and I told him he better satisfy himself.

Q Better get counsel at your expense—when I say your expense I mean the Metropolitan company. A I presume that all charges in connection with the discharge of his trust would be borne from the sinking fund.

Q Now it appears from the supplemental answer filed in this case that the officers who were officers and directors at the time the suit was brought have gone out and others have come in; you appear as secretary and treasurer, is that right? A Yes.

Q And you are also a director? A Yes.

Q Who is Hugo R. Von Wessely? A He is a director.

Q Where does he live? A Hartford, Connecticut.

Q He is a friend of yours? A Yes.

Q You asked him to serve? A Yes.

Q Is he employed by you? A Yes.

Q In your office? A No, he is not employed by me personally, but by one of my companies, he is treasurer.

Q Who is Louis W. Chism? A He is a director of the company also.

Q Where does he live? A Plantsville, Connecticut.

Q He came in at your request? A Yes.

Q He was employed by one of your companies? A Yes.

Q You are the third director? A Yes.

Q Where is the New Jersey director of this company? A There is none.

Q Don't you know that the law of New Jersey requires that at least one director shall be a New Jersey director? A I understand it has

been repealed; I know we had a New Jersey director at one time.

The Court. Well, I will strike out the whole thing, because it makes no difference what the law is.

Q Here is a question I would like to ask. Why does this statement filed December 13, 1915 contain after the words "Warren D. Chase" in the list of directors, the words "New Jersey Director?"

The Court. I will strike that out. What difference does it make?

Mr. English. Because this company may get in trouble with the State authorities.

A I think I can explain that.

Q Is Mr. Von Wessely a steamship man?

The Court. I am going to strike that out. I assume that these men are mere dummies for Mr. Chase.

Mr. English. If hour honor assumes that, that is all I want.

Q Did you have any relationship with the Maine Company No. 2? A Only to organize it, as I recall it.

Q Did you have anything to do with it after it got in operation? A No, unless perhaps to pick up one or two things following the organization.

Q Are you aware of the fact of whether or not when they were operating, any of the freight boats, either by accident or otherwise, were temporarily put out of commission? A What was put out of commission?

Q Some of the freight boats. A Not that I knew of.

Mr. Faulks. I object. Wait a minute.

Q Do you know whether or not they were compelled to charter any other boats to take the place of them temporarily?

Mr. Faulks. I object to that as immaterial, your Honor.

The Court. What difference does that make?

Mr. English. I think it will appear, if your Honor will let him answer the question yes or no.

Q (*By the Court.*) Do you know? A No.

Q You said, I think, that the New England Securities Company gave its note for one million five hundred thousand dollars to the Billard Company, secured by stock of the Maine Company No. 2; is that right? A Yes.

Q What became of that note? A What became of it?

Q Yes. A I don't know, the last that I knew of it was when Governor Hill, of Maine, purchased from the New England Securities Company the capital stock of the Metropolitan Steamship Company No. 2, and took with him an order from the New England Securities Company entitling him to get that stock when the note to the Billard Company was paid with interest.

Q Gov. Hill, it already appears in the case, did what he did at the request of Mr. Robbins? A Not that I know of.

The Court. I strike that out. It already appears in the case, it already appears.

Q Do you know whether when Gov. Hill did that he was acting for Mr. Robbins? A No, I do not.

Q Do you know whether or not the note ultimately found its way into Gov. Hill's lock box? A Only as I have heard it testified.

Q In this case? A No, not in this case I haven't heard it testified.

Q In other cases, all right. Did you have any negotiations with Gov. Hill in connection with the matter? A No.

Q Did you indirectly through Mr. Davis? A Yes.

Q And what Mr. Davis did he did at your request, did he not? A He handled the matter as my representative, after reporting to me that Gov. Hill had called on him.

Q So what Davis did in negotiating with Hill was in carrying out whatever desires you had in the matter, was it not? A No, carrying out the instructions from my client; I merely reported to Mr. Robbins, who was the owner of the New England Securities Company.

Q Your only client was Mr. Robbins? A Yes, he owned the company.

Q Mr. Davis at your request, representing Mr. Robbins, negotiated with Mr. Hill to take over that stock and note? A Yes, it was so arranged.

Q You were paid for your services in the matter? A Yes.

Q Whose money? A New England Securities.

Q Where did it get the money? A The arrangement made with Gov. Hill upon the purchase of the stock was that he should pay for this stock a sum which amounted to somewhere between four and five thousand dollars more than the amount of the note to the Billard Company, with interest, and that amount was paid over by his representative in his New

York office to Mr. McIntosh and myself; Mr. McIntosh was then the treasurer of the company.

Q Mr. McIntosh got two hundred and fifty of it? A I do not recall what he got.

The Court. What is the use of going into that; we had testimony on that.

Mr. English. I want to show it was the same transaction, that is all. So long as that appears, that is all I am after.

Q Do you know who was the ultimate source of that money that came to Mr. McIntosh? A It was provided by Governor Hill.

Q Do you know where he got it from? A No, I do not.

Q Never have found out? A No; simply as I have heard testimony of course?

Q Now do not answer this until counsel has opportunity to object. Haven't you heard testimony to the effect that that money which was provided by Governor Hill came from the Billard Company?

Mr. Faulks. Objected to as not being competent proof.

The Court. I will strike it out.

Q Did you ever see the stock that paid that money? A Paid which—between four and five thousand?

Q Yes. A Yes, I saw the check at the time I was there.

Q Whose check was it?

The Court. What is the use of going into that with this witness. We will have the testimony that was taken in Maine, and that explains that transaction so that there can

be no doubt about what happened. The checks were deposited in Governor Hill's account and the Governor drew checks against them.

Q Do you remember that one of the creditors of the Metropolitan of New Jersey was the Atlantic, Gulf & West Indies Steamship Company? A Yes, known as the Agwi.

Q What was the indebtedness of the Metropolitan to the Agwi? A Why, I will have to explain it a little so that you can see what that is; at the present time it stands—

Q Wait a moment. I just want the amount, on this question. A The amount stands in the books at sixty thousand dollars, two thirty-thousand-dollar notes.

Q Two thirty-thousand two year notes or ten-year notes? A They originally had a quantity of ten-year notes, and an arrangement was made, I believe before I came into the company, by which they exchanged them for a smaller quantity of short-term notes, amounting to sixty thousand dollars.

Q Some agreement was put through the minutes of the company that they be paid in two years, and then in three years? A I have read something of that sort.

Q Thirty thousand in two years and thirty thousand in three years? A I cannot recall the exact terms.

Q (*By Mr. Faulks.*) Was that before March 5, 1910? A I think it was; the record will tell.

Q Whenever it was, there was some such arrangement? A Yes.

Q Those notes have not been paid yet, have they? A No.

Q What became of the other twenty-five thousand of the two-year notes which were not exchanged for bonds of the second mortgage? A That was paid.

Q Out of the sinking fund? A I cannot say; the books will indicate.

Q Paid by the Metropolitan Company? A Oh, yes.

Q To Mr. Robbins? A It was paid either to him or on his order.

Q But he got the money anyway? A Oh, it went to his benefit.

Q And the Agwi has not got its money yet? A No.

The Court. I will strike that out; that is in two or three times.

Mr. Faulks. If your Honor please, I suggest it would be better for me to postpone my cross examination of this witness and confine it with my direct examination; the two matters are necessarily each intermingled, and I think it would be better to do that.

Mr. English. That is in your Honor's discretion. I suppose like any other counsel he wants to confer with the witness.

Mr. Faulks. No, I do not care to confer further with Mr. Chase; that is not the reason I suggest it. Mr. English has touched on a good many matters that I will naturally touch on in my direct examination of the witness, and I think that in the interest of expedition, or having the facts clearly before the court, it would be better if I examined Mr. Chase once for all as the witness of the defendant.

Mr. English. Of course this is in your Honor's discretion, but this witness is practically a defendant in the case.

The Court. Yes, and I have let you cross examine him here.

Mr. English. Yes, just on that theory, and it seems to me that being so we ought not to have an interruption now, unless your Honor says so.

The Court. I will not say that I will permit Mr. Faulks to reserve his cross examination, but I will permit him to examine this witness to such an extent as he desires to examine him when he calls him on his direct case.

Mr. English. Then he is through as far as the complainant is concerned until he recalls him again as his own witness?

The Court. Yes.

Mr. English. If he calls him as his own witness he cannot cross examine him.

The Court. I will give him the same privilege as I gave you. I do not think any examination of this witness, whether it is cross examination or whether it is direct will make any difference in his testimony.

Q (*By the Court.*) Have you acted for Mr. Robbins in any other transaction than this one, in the same way or substantially the same way? A I think I have; I cannot recall the exact cases now, but I have been associated with Mr. Robbins in business matters and legal matters for about fifteen years.

Q (*By the Court.*) Prior to March, 1910? A Yes. Whether I was associated with him in business matters prior to that time I cannot say,

but I was handling business for him of various sorts right along.

Q (*By the Court.*) Were any of these businesses such as the purchase of steamship lines or transportation lines which ultimately landed up in the possession of the New York, New Haven & Hartford Railroad? A No.

Q (*By the Court.*) Why was it you ceased your connection with the New York, New Haven & Hartford Railroad at the time you did? A Because I was engaged in business myself and I had been handling it nights and Sundays until it had grown to such an extent I couldn't do justice to it any longer, and I practically ceased my connection with the New Haven about the first of July of that year, but it took them some time to find a man to take care of the work I had been handling, and I went back one or two days a week, as I could, to keep things along until they got a successor.

Q (*By the Court.*) At the time this transaction was initiated, started, in September, 1909, or October, 1909, in your preliminary discussions with Mr. Robbins was it understood that the Yale and Harvard should go to the Pacific Coast at that time? A No, not at all, except I knew Captain Goodall and Mr. McGovern had been trying to get the boats to go out there.

Q (*By the Court.*) Mr. Robbins knew that, did he not? A Yes, sir.

Q (*By the Court.*) And yet you say that it was not within the contemplation of Mr. Robbins, to your knowledge from what he said to you, to send the boats to the Pacific Coast? A No; I understood that they couldn't provide the money and the thing had blown up, as it was put.

Q (*By the Court.*) Robbins was perfectly willing to let them go to the Pacific Coast if the money could be provided? A He apparently was not interested in the passenger boats to any great extent; his interest was in the freight boats.

Q (*By the Court.*) He wanted to get rid of these passenger boats in some way or other? A At that time there was no discussion of it except they would be operated, if he got them, between New York and Boston by Mr. Austin. Of course I hoped that we could ultimately dispose of the boats in the same place that we hoped to dispose of the freight boats, to the Eastern Steamship Company.

Mr. English. Your Honor, we did expect to call Mr. Mellen, and he agreed to come, but he wires Mr. Swacker in a telegram I have here: "Am confined to the house threatened with pneumonia, and cannot get my nose outdoors for a week." He sent the word to his counsel last week, Friday, and asked him to communicate with me. I would like to reserve the right, if your honor will permit us to do so, in case we can get Mr. Mellen to call him before the case closes. If we can do that, and if the other side do not read his deposition, which has been taken, that we have the right to read it if we want to as part of our case.

The Court. Under the statute you have that right, have you not?

Mr. English. Yes, we could read it now if we wanted to, but I do not want to read it if the other side will.

The Court. If counsel will read it that ends the discussion. I will reserve your right to call Mr. Mellen if you can get him.

Mr. English. I am frank to say I do not believe we can get him; if we can we would like to reserve the right.

COMPLAINANTS REST.

Mr. Faulks. If your Honor please, I will begin by reading the deposition to which Mr. English has just referred, taken on May 28th, 1914.

RECESS.

Mr. Faulks. I desire to offer in evidence minutes of the directors' meeting of the Metropolitan Steamship Company of New Jersey held November 19, 1909, appearing on pages 1 to 25 of the book marked "Metropolitan Steamship Co., directors' minutes," and call attention—

Mr. English. Are you offering the book now?

Mr. Faulks. I am offering the minutes of that meeting.

Mr. English. I think we ought to have the book in, your Honor, and then let him call attention to what he wants to offer; that is the rule that has been applied in cases,—then the book is in evidence and anybody can examine it that wants to.

The Court. Why should that whole book be in evidence?

Mr. English. I have often heard the judges rule just that thing.

Mr. Faulks. That is not my understanding. There is no objection to counsel on the other side offering any part of the minutes that he desires, but I do not see why I should be com-

pelled to encumber the record with the whole book.

The Court. I think the general practice has been, and I will adopt it now, the book will be marked and no part of it shall be considered in evidence except such portion of it that is called to the attention of the Court on the record.

Mr. English. That is my understanding of it.

Mr. Faulks. I now desire to call to the Court's attention on the record minutes of the directors' meeting to which I have just referred, namely, the one of November 19, 1909, appearing on pages 1 to 25 of the record book and particularly to the following matters there appearing. First, that this was the first meeting of the board of directors of the defendant company, the Metropolitan Steamship Company of New Jersey, the directors being Thomas Aschenbach, Jesse Myers and Ernest J. Ellenwood; second, to the fact that the by-laws—

Mr. English. Don't these minutes in evidence speak for themselves? Of course, he can read to your Honor and argue and garble—

The Court. I assume counsel is not garbling anything. I don't want him to read the whole thing.

Mr. English. I don't object to his calling your Honor's attention to anything, but I don't think—

The Court. I want Mr. Faulks on the record to refer me specifically to that portion of those minutes he wants me to consider.

Mr. English. That is all right about calling your Honor's attention to page numbers.

The Court. I want more than page numbers; I want what the thing refers to.

Mr. Faulks. I was simply trying to give your Honor information on the record in somewhat tabulated form so if you want further reference to it you can get it without difficulty.

Second, at page three, where it appears that a resolution was adopted,—by-laws adopted at the stockholders' meeting by the board of directors.

Third, to the agreement entered into between the company and John W. McKinnon, appearing on pages three to thirteen, apparently. This includes an offer made by Mr. McKinnon to the company to sell to the company the property which he had purchased from the receivers of the Metropolitan Steamship Company of Maine in consideration of the company's agreeing to issue to him or to his order $3,000,000 par value of its first mortgage five per cent. thirty year sinking fund bonds dated November 15, 1909, due and payable November 15, 1939; $500,000 par value gold notes, dated November 15, 1909, due and payable November 15, 1911, bearing interest at the rate of six per cent. per annum, payable semi-annually; and $2,999,000 par value of the company's stock. On page twelve the offer is accepted by writing, signed by the president of the company, and on page 13 there is a resolution of the board unanimously accepting.

Then next, pages thirteen to twenty-three, which authorized the execution of the mortgage, fixed its terms and provisions, and contains a copy of it.

Mr. English. As I remember the testimony, it is already in evidence, C. 1, I think it is.

Mr. Faulks. Then pages twenty-four and twenty-five containing form of the two year six per cent. notes.

I next direct attention to the minutes of the meeting of November 29, 1909.

Mr. English. May I interrupt just there, because it is logical at this place? The directors' minutes put in evidence adopt the by-laws; ought we not to have the by-laws?

Mr. Faulks. I am going to give them to you.

Mr. English. If you are going to put them in, all right.

Mr. Faulks. Minutes of November 29, 1909, appearing on pages twenty-six to thirty, at which the same directors were present, and it was deemed advisable to reduce the capital stock from $3,000,000 to a million and a half and to issue in lieu of the capital stock thus retired or surrendered $1,500,000 of the ten year notes, the form of which was shown to the witness yesterday, and that action was authorized.

Book marked Exhibit D. 22.

Next the minutes appearing on pages fifty to fifty-seven, being those of the directors' meeting of December 27, 1909, which had to do with the substitution for certain of the ten year notes held by the Atlantic Gulf and West Indies Line of two year notes of the par value of $60,000 payable $30,000 in two years and $30,000 in three years.

Mr. English. That is the matter I interrogated Mr. Chase about this morning.

Mr. Faulks. And showing that the substitution of those notes was authorized; also that of turning over to the company of certain liquid assets purchased from the receiver by Mr. McKinnon. It relates to the transfer of the company of the liquid assets purchased by McKin-

non from the receiver and the terms upon which they were to be acquired.

The same minutes on page fifty-seven refer to a letter from the American Trust Company of Boston, trustee of the company's existing $3,000,000 first mortgage, notifying the company of the necessity of providing an interest payment of $18,750 on January 1, 1910, followed by a resolution authorizing the treasurer to borrow such amount as may be necessary to provide for the payments called for in this letter, and to give a note or notes in payment of the amount so borrowed.

Pages sixty to sixty-four, being the minutes of a directors' meeting held on December 28, 1909, two of the same directors being present. These minutes have to do with the same matter, namely, the acquisition by the company of the liquid assets; the same thing as referred to in the previous meeting, confirmation of it.

Next are the minutes of the meeting of the board of directors January 12, 1910, appearing on pages seventy to seventy-two, in which Mr. McKinnon as president was authorized to execute in behalf of and in the name of this company bonds in the sum of $275,000 to the receivers of the Metropolitan Steamship Company of Maine No. 1. Also resolution appearing on page seventy-two that the action by the treasurer in giving a note for $18,750 for the purpose of securing the amount necessary to pay interest on the bonds of the company was ratified and approved.

Next are the minutes appearing on page seventy-nine, being the minutes of the meeting of January 28, 1910.

Mr. English. Just page seventy-nine?

Mr. Faulks. Just page seventy-nine—ratifying the giving of certain demand notes, one for $10,000 dated January 15, and another of $5,000, dated January 21; and also to a resolution authorizing the president or vice president, together with the treasurer, to borrow in the name and on behalf of the company such sums of money as they may deem wise and proper, and authorizing them to execute on behalf of the company such notes and other obligations as they may deem proper, covering such amounts so borrowed, and to hypothecate any securities of the company in connection with any loans so made.

Also to the minutes appearing on pages eighty-one to eighty-three, being those of the meeting of February 9, 1910, accepting the offer of the Assets Realization Company of $2,000 for the company's equity in certain bonds of the Metropolitan Steamship Company of Maine No. 1, which had been put up as collateral for certain notes. Also authority to sell certain claims of the company against the Mercantile National Bank. Also motion ratifying the action of the president and treasurer in giving the two thirty-thousand dollar notes above mentioned to the Atlantic Gulf and West Indies Steamship Lines in consideration of the cancellation of $72,708.22 of the outstanding ten year notes.

Also to the minutes appearing on pages eighty-five to eighty-six, being those of a meeting of February 8, 1910, at which the directors present were Messers. McKinnon, Shaw and Wire, which contains the offer in reference to the sale of the freight boats to Wing and Russell determining to accept the offer and authorizing the officers of the company to take such steps as

may be necessary and proper in order to secure a release from the mortgage.

Mr. English. The matter referred to in that last directors' meeting, referred to by Mr. Faulks as evidence, is a part of Exhibit C 5.

Mr. Faulks. Also to the minutes appearing on pages ninety-six to 104, being those of the meeting of March 4, 1910, at which the same last mentioned three directors are recorded as present, and which contains among other things the following:

"Whereas, the proposition has been made to this company by Edward T. Canfield for the purchase of the Union Wharf property in Boston, Massachusetts, and

"Whereas, the said wharf property is no longer useful for the purposes of this company, and

"Whereas, the said Canfield is anxious to obtain possession and use of the said wharf at once, and

"Whereas, it will take some time to obtain the consent of the trustee under the mortgage securing the said first mortgage bonds to release said wharf property from the lien of said mortgage so that the title of said property may be conveyed to the said Canfield or his assigns and nominee,

"Whereas, said Canfield has expressed his willingness to assume the possession of said wharf under the following contract."

Then follows the contract itself.

Mr. English. Between whom?

Mr. Faulks. Between the Metropolitan Steamship Company and Edward T. Canfield, copy of which is set forth in the minutes, having been

made as of March 3, 1910, and cites the properties that are to be conveyed for the sum of $350,000, said purchase price to be paid at the option of Canfield or his assigns, 350 first mortgage bonds when and as said Metropolitan Steamship Company is able to convey to him or his assigns said real estate above described with a proper release by the trustee from the mortgage; cites that the conveyance is to be made subject to a mortgage of $500,000; also that the judgment of the directors is that the price offered is fair and represents the true value of the property, and that it is desirable and proper and judicial management for the maintenance of the company to sell the wharf at such price.

Next I offer the minutes appearing on pages 105 to 111, being the minutes of the meeting of the board of directors of March 5, 1910. This is the meeting at which the new officers of the company were elected. The new directors elected at this meeting were J. Turner Grieve, Mr. Joseph Righter and Mr. Nicholson. At this meeting the operating agreement for the operation of the Yale and Harvard by the Maine Steamship Company No. 2 for the season of 1910 was authorized in the agreement which appears on pages 109 to 111.

Next to the minutes of the meeting, appearing on page 112, being the minutes of the meeting of the directors of March 8, 1910, at which Mr. Nicholson was elected secretary of the company.

Next to the minutes, appearing on pages 113 to 114, being those of the minutes of the meeting held on June 16, 1910, directors present being J. Turner Grieve, Joseph B. Righter and Douglas Nicholson, constituting all the directors

of the company. It was at this meeting that the execution of the release and deed with reference to the Union Wharf was authorized.

Mr. English. Those minutes are in evidence, your Honor, as Exhibit C. 53.

Mr. Faulks. Next to the minutes, appearing on pages 115 to 127, being those of the meeting held on October 7, 1910, at which the same three last mentioned directors were present. I call attention to the report rendered by the treasurer as to the financial condition of the company, the proposition that was offered with reference to operating agreement proposed to be made with the Pacific Navigation Company for the transfer of the steamships Yale and Harvard to the Pacific Coast and their operation there between San Francisco and San Pedro or San Diego, the resolution accepting the proposition, the resolution with reference to the authorization and execution of the second mortgage to be given to secure the payment of seven hundred and fifty thousand dollar second mortgage bonds, the form of the mortgage, the form of the sinking fund agreement which was produced while Mr. Greening was on the stand, the resolution with reference to the approval of the action taken by the treasurer in commencing to get the Yale and Harvard ready for the voyage to the Pacific Coast, the execution of the form of trust agreement with Birdsey E. Case.

Mr. English. We ought to have it appear on the record that the minutes just offered regarding the operating agreement between the Metropolitan Company and the Pacific Navigation Company is in evidence as C. 34, and the trust mortgage to secure the second mortgage bonds

executed by Mr. Greening is C. 188, and the sinking fund agreement is C. 189.

Mr. Faulks. Next are the minutes appearing on pages 128 and 129, being those of the minutes of the meeting of October 13, 1910, principally ratification of the action that had been taken by the treasurer under previous authority.

Next to the minutes, appearing on pages 130 to 133, being those of a meeting of the board of directors of October 27, 1910, correcting a clerical error which had occurred in the second mortgage.

Next to the minutes, appearing on pages 136 to 137, being those of the meeting of November 29, 1910. I call your Honor's attention to the fact that this is the first directors' meeting at which any of the individual defendants are recorded as present. As a matter of fact they were not elected, as will appear by the stockholders' minutes shortly, until, I think, November 17, 1910.

Mr. English. These were the directors when we filed the bill.

Mr. Faulks. These minutes have to do with the arrangement by which Mr. L. H. Stewart was to be sent out to the Pacific Coast to pay off the crews of the boats and to see that the Pacific Navigation Company had the agreed working capital in its treasury.

The Court. No guaranties as to how long it can keep it there, is there?

Mr. English. I don't believe that appears in these minutes.

Mr. Faulks. It cites that he was to obtain a statement of the financial condition of the Pacific

Navigation Company, sworn to by its president and treasurer, certified to by a chartered accountant in good standing, showing that there had been good faith, paid into the treasury of the Pacific Navigation Company upon subscriptions to its capital stock at least $250,000 in cash, and that at that time it had a working capital over and above all debts, liability and investments, and cash in its treasury of at least $100,000.

Next to the minutes, appearing on pages 139 to 141, being the meeting of April 11, 1911, showing some change in the officers of the company, and the fact that at that time Mr. Rodney T. Martinsen succeeded Mr. Nicholson as secretary.

Mr. English. They got a new president then, too; Mr. Hughes went in and Mr. Greening went out.

Mr. Faulks. No objection to that appearing.

Next to the minutes, appearing on page 141, being those of a meeting of the directors held on May 1, 1911, which have to do with the release of the India wharves and the consideration received therefor.

Mr. English. Just the one page?

Mr. Faulks. One page.

Next to the minutes, appearing on pages 142 to 143, those of a meeting held on May 3, 1911, having further to do with the India Wharf.

Next to the minutes, appearing on pages 146 and 147, being those of a meeting of May 11, 1911, having to do with the release of the India Wharf from the first mortgage.

Next to the minutes of the meeting, appearing on pages 169 to 171, being those of a meeting

of June 6, 1914, where Mr. Martinsen tendered his resignation as secretary and treasurer and as a director of the company; such resignation was accepted and Mr. Engelke was elected secretary in the place of Mr. Martinsen. That was only a temporary arrangement, and Mr. Chase was thereupon elected director of the company and secretary and treasurer thereof to fill the unexpired term made vacant by the resignation of Mr. Martinsen. Mr. Hughes then offered his resignation as an officer and director of the company and it was accepted. Hugo R. von Wessely was elected a director and the president of the company. Also to a resolution authorizing Mr. Chase, Warren D. Chase, to countersign all checks, drafts and other orders for the withdrawal of funds by Alfred C. Greening as trustee.

Also to the minutes appearing on page 174, being those of a meeting of October 23, 1915, at which Mr. Engelke's resignation was accepted as director and Mr. Lewis W. Chism was elected in his stead.

Next to the minutes, appearing on page 180, being those of the meeting of June 10, 1916, one page, and have to do with the report made to the treasurer at that time as to the effect of the operations on the tentative monthly arrangement with the Pacific Navigation Company and with the resolution that, subject to the approval of the stockholders and policy to that effect, the executive officers of the company should be authorized to direct on its behalf the operation of the steamships Yale and Harvard on the Pacific Coast by the Pacific Coast or other parties under such terms as shall secure by them the proper maintenance of said ships and

certain financial policy of this company, and during the life of any such contract also necessary expenses and fixed charges.

That finishes that book, your honor.

I now produce a directors' minute book, No. 2, of the same company which I will ask the stenographer to mark.

Marked Exhibit D. 23.

I offer in evidence and direct the attention of the Court to the to the minutes appearing on pages 1 to 4 of this book and those of the meeting of August 7, 1916, in regard to the resultant negotiations which had been under way for the further operation of boats on the Pacific coast, and their termination in a proposed contract between the Metropolitan Steamship Company of New Jersey and Pacific Alaska Navigation Company, showing that this contract was submitted at that meeting; also to the copy of it which appears in the minutes and to the authorization of the execution of this contract, provided that it should be approved by a vote of the stockholders of the company holding at least two-thirds of its capital stock.

The Court. We have not had any evidence with respect to that company whatever, have we?

Mr. Faulks. Not as yet.

Also to resolution appointing Captain Goodall as the company's representative on the Pacific coast to look out for the boats and its interest there.

That ends the directors' minutes, your Honor, There are some stockholders' minutes.

ADJOURNED UNTIL TOMORROW.

Eugene W. Leighton, direct.

Continuation of proceedings pursuant to the adjournment last had, on the 12th day of January, 1917, at the place and in the presence of the parties and the Court as before.

EUGENE W. LEIGHTON, sworn.

Direct examination by Mr. Faulks.

Q Where do you reside? A I reside in Newton, Massachusetts.

Q Are you connected with the American Trust Company of Boston? A Yes, sir.

Q In what capacity? A Trust clerk.

Q How long have you held that position with the trust company? A Why, fifteen years or more.

Q You were connected with the company in that capacity in February, 1910? A Yes, sir.

Q I show you a letter addressed to the Trust Company under date of February 23, 1910, signed by G. W. Apsey, to which there is attached three sheets purporting to give the earnings of the freight steamers of the Metropolitan Steamship Company for the years 1906, 1907, 1908 and 1910; was that letter and sheets attached to it, to which I have just referred, received by the trust company at that time? A Yes, sir.

Q And who is the Mr. Apsey that signed that letter? A Mr. Apsey was the auditor or comptroller of the Metropolitan Steamship Company.

Q That letter and those sheets were received from that company? A They were.

Mr. Faulks. I offer the letter to which I have just referred and its attached sheets in evidence, and ask that the copy may be

marked and substituted in lieu of the original.

Q Those you produce from the trust company's file, I understand? A Yes.

Mr. English. I object to this. It seems to me that the same rule should be applied to this which your Honor applied to some letters which we tried to put in without success, namely, that that is no way to prove the contents. Mr. Apsey made those figures; let him come here and testify and be cross examined about it. Counsel shut out some letters of mine on the ground of this very objection.

Mr. Faulks. If your Honor please, Mr. McKinnon testified as a witness for the complainant, and, as already appears by his deposition which has been read and admitted in evidence, he stated on page 40 of the transcript that at or about the date of this letter his company sent to the American Trust Company in connection with the proposed sale and release of the freight boats an accounting statement showing the result from the operation of the freight vessels for I think three or four or five preceding years, and Mr. Leighton now produces that from the trust company's file and testifies that it was received from the Metropolitan Steamship Company at that time, and I think that it is entirely competent, and is evidence of the same character as was put in through Mr. McKinnon. The letter and the resolution of the board of directors reciting that these boats had been operated at a loss for several years was put in through Mr. English, and cer-

tainly the other papers that were referred to and which were not put in by him are competent evidence.

The Court. Do you object to it?

Mr. English. Yes, I do.

The Court. I will exclude it.

Q Mr. Leighton, can you tell me from either your recollection or these papers which you handed me a moment ago the amount of insurance which has been carried on the steamships Harvard and Yale from the time that the company was incorporated down to the present time?

Mr. English. Just a moment. You can answer yes or no, Mr. Leighton.

A Yes.

Q Will you please do so?

Mr. English. I object to that. I suppose this gentleman does not know except he got it from correspondence.

The Court. You may cross examine him.

Cross examination by Mr. English.

Q Were you the man that placed the insurance? A No, sir; we have the policies in our office.

Q You mean they were filed with you after they were placed? A Yes, by the insurance agent of the company.

Q Just received and filed away in the vault somewhere? A Yes, we have the custody of the policies.

Q You didn't pay any particular attention to them except to see that they were safely kept? A See that they were renewed from time to time.

Q You kept a record of the expiration day, and saw that the agent got a new policy to take the place of the old one? A Yes.

Q Other than that you had no particular responsibility in the matter?

The Court. Does it make any difference whether he did or not. He can testify to what policies he had.

Mr. English. And the amounts?

The Court. And the amounts, if he had them.

Q Do you know the amounts of the policies and all that? A I know what the policies were written for, the total amount, yes; I do not know them in detail.

Q What they were actually written for or what they were supposed to be written for? A Supposed to be written for.

Q (*By the Court.*) You mean you had the policies? A Yes.

Q (*By the Court.*) You looked at the policies? A Oh, yes.

Q (*By the Court.*) You knew what they were for? A Knew what they were written for.

Q (*By the Court.*) Knew how much they were written for? A Yes.

Q Do you remember that now? A Approximately two million dollars on each boat.

Q I ask you if you remember the figures now? A The details?

Q Yes. A Well—

Q This was ten years ago, nearly. A Well, the insurance had been practically the same at all times.

Q I do not care anything about that. What I want to know is whether you have personal

definite recollection now, after ten years, or whatever the lapse of time is, of the amounts of those policies? A Yes, I have a recollection of that amount.

Q You do have recollection? A Yes.

Q Without what somebody else has told you? A Oh, yes, yes, indeed. They have carried a million.

Further direct examination by Mr. Faulks.

Q (Question read.) These papers to which I referred in my last question, are the figures on them taken from the records of the Trust Company which contain the amount of this insurance? A Yes.

Q Now, will you please refer to those papers and state the amount of the insurance?

Mr. English. That is a different situation, your Honor. As I understood on his cross examination he said he could testify from memory.

The Court. I am going to let him testify from the records, I do not think it will do any harm to anybody.

Q Proceed. A On the Harvard hull, $1,000,000. Protection and indemnity, $1,000,000. Premiums, $24,000. Earnings, $95,600.

Further cross examination by Mr. Faulks.

Q Are you talking about insurance now on something else? A These are insurance policies in the office.

Q You did not insure the earnings, did you? A We do not place the insurance.

New Jersey State Library

Q I don't quite understand. A These policies were delivered to us by the company.

Q I know, but you are asked to state the amount of insurance, as I understood the question. Now, you insured the hull? A Yes.

Q You had some indemnity insurance, which I judge is from liability? A Yes.

Q What else was insured? A Well, the policy is termed a premium policy.

Q What does that mean? A I presume it insured the steamship company against any loss on premiums.

Q I don't know what that means, insured against loss on premiums? A Well, I could not tell you exactly.

Q How many policies were taken out on the Harvard, how many kinds of policies? A There were four kinds on each.

Q Now what four kinds? A Well, on the hull, there is—

Q Well, that is one kind, on the hull. A There is protection and indemnity.

Q That is the second kind? A Yes; premiums.

Q Insurance on premiums? A Insurance premiums.

Q Yes, and the fourth? A And the fourth is earnings.

Q Insurance on earnings? A Yes.

Q What do you understand insurance on premiums to mean? A I don't believe I could explain that.

Q What do you understand insurance on earnings to mean? A As I understand that is to cover any loss of earnings by vessels being laid up by damage or otherwise.

Q And insurance on premiums you do not know what that means. A No.

Eugene W. Leighton, further direct.

Further direct examination by Mr. Faulks.

Q You were testifying with reference—

Mr. English. He has given us the hull and indemnity.

Q This is on the Harvard? A Yes.

Q Give us the amount of insurance on premiums and on the earnings of the same boat? A Premiums $24,000; earnings $95,600.

Q Now give us the figures, the same figures, with reference to the steamship Yale? A On the Yale hull $1,000,000. Protection and indemnity $1,000,000. Premiums $24,000. Earnings $95,600.

Q (*By Mr. English.*) Both the same? A Yes.

Q Do you know whether or not the insurance on earnings has been recently increased? A I think that it has since the new agreement was executed with the Pacific Alaska Company.

Q By whom are these insurances to which you have just testified arranged, by the American Trust Company or the Metropolitan Steamship Company? A By the steamship company.

Q And the premiums paid by it? A Yes, so far as I know.

Q And the policies forwarded to your company? A Yes.

Q Mr. Leighton, do you know how many of the first mortgage bonds, secured by the mortgage made to your company by the Metropolitan Steamship Company under date of November 15, 1909, or thereabouts, are now in the sinking fund? A There are four hundred and twenty-two thousand in the fund at the present time.

Eugene W. Leighton, further direct.

Q And is there any cash in the sinking fund in addition to that amount? A Yes, sir; there is a balance of $10,664.29.

Q Has or has not the Metropolitan Steamship Company made all of the sinking fund payments required by the terms of the mortgage to be made? A It has.

Q Has there been any delay in the making of any of those payments? A No delay at all.

Q Has or has not the Metropolitan Steamship Company always paid promptly the interest on all of the outstanding bonds under that mortgage? A It has.

Q Has there ever been any delay in the furnishing to the Trust Company of all the moneys needed to make these interest payments? A There has been no delay.

Q Are you familiar with the fact that in the fall of 1910 the Metropolitan Steamship Company made an operating agreement with the Pacific Navigation Company, under which the Yale and Harvard were to be operated on the Pacific Coast, between the ports of San Francisco, San Pedro and San Diego, for a term of five years from the date of their arrival at San Pedro? A Yes, sir.

Q During that period were any examinations arranged for and made of the Yale and Harvard by an engineer, and reports received as to the condition shown by those examinations? A Yes, sir.

Q By whom were those examinations made? A Made by Mr. Edward S. Hough.

Q Hough? A Yes, of San Francisco.

Q Who is Mr. Hough? A He is a naval engineer that we appointed on the recommenda-

tion of Mr. Powell, president of the Fall River Ship Building Corporation.

Q Did Mr. Hough from time to time send you reports of the examinations made by him? A Yes, sir.

Q And were his fees and charges paid by your trust company, and it in turn reimbursed by the Metropolitan Steamship Company for those payments, and are those reports now in the custody and files of the trust company? A Yes, sir.

Q I show you a typewritten pamphlet marked "Report of examination of Edward S. Hough, Marine Surveyor, SS. Harvard and Yale, February 8, 1913"; is that one of those reports? A It is.

Q Was that received by the trust company from Mr. Hough? A From Mr. Hough, yes, sir.

Q Shortly after the date it bears? A Yes.

Mr. Faulks. I offer that in evidence if your Honor please, and ask that a copy which the witness has had made may be marked and received in place of the original.

Mr. Ward. That is the same one already marked for identification, is it not?

Mr. Faulks. Yes, this is one of those marked.

Mr. English. Somewhere during the proceedings we consented that certain reports which they showed us should be put in evidence. I am looking to see if this is the same one.

Mr. Faulks. Yes, this is one of them. The situation is this: At the time the Boston depositions were taken the Pacific

Navigation Company's operating contract had not expired, and while some of the reports which this witness has now produced, then in the custody of the trust company, were marked for identification, others have come in since. Now my recollection, Mr. English, is that you agreed that these reports produced in Boston and any similar ones received from Mr. Hough should go in evidence.

Mr. English. You are quite right, up to these particular ones; I do not remember anything about any similar ones. I am perfectly willing that this should go in because we agreed to it; of course I will stand by any agreement I made, and to identify the paper I had Mr. Bindseil mark it, and this corresponds with the one that is marked. The agreement was that if Mr. Hough was called he would testify as stated in the report. I would like to have it that way rather than have the report go in as evidence. That if he was called he would testify as stated in this report, and this particular paper which counsel produces has already been marked D. 4 for identification.

The Court. That goes in evidence as D. 4.

Mr. Faulks. Now here is No. 2, which was marked D. 6 for identification. Suppose you mark the one dated February 8, 1913, exhibit D. 4, it having already been marked D. 4 for identification.

Marked Exhibit D. 4.

Mr. Faulks. Is it necessary to have these originals marked? You do not care about that.

Mr. English. I do not care about the originals. Have it appear in every case that the agreement is that the witness if called would testify as stated in these particular papers.

Mr. Faulks. The next is the supplemental report, dated August 25, 1913, heretofore marked exhibit D. 6 for identification.

Marked Exhibit D. 6.

Mr. Faulks. The next is the report of February, 1914, heretofore marked D. 7 for identification.

Marked Exhibit D. 7.

Mr. English. That he would testify as stated in that report.

Mr. Faulks. The next is report of April 8, 1914. I do not think that that has heretofore been marked.

Mr. English. There is no objection to this. That he would testify as stated in this letter of April 8, 1914.

Marked Exhibit D. 24.

Mr. Faulks. The next report is, while not dated, marked "Received August 24, 1914."

Marked Exhibit D. 25.

Mr. Faulks. The next is No. 6, dated February 27, 1915, which I will ask to have marked.

Marked Exhibit D. 26.

Mr. Faulks. The next is No. 7, dated July 21, 1915.

Marked Exhibit D. 27.

Mr. Faulks. The next is No. 8, dated August 20, 1915.

Marked Exhibit D. 28.

Mr. Faulks. The next is No. 9. This No. 9 seems to be dated September 28, and this copy of it October.

A Oh, that is a letter.

Q A letter referring to it? A Referring to it, yes.

Mr. Faulks. Dated September 28, 1915.

Mr. English. You are marking the report and not the letter?

Mr. Faulks. Yes; the letter is about something else apparently, and I will take that out.

Marked Exhibit D. 29.

Mr. Faulks. The next is No. 10, dated March 21, 1916.

Marked Exhibit D. 30.

Mr. Faulks. The next and last is No. 11, dated September 30, 1916.

Marked Exhibit D. 31.

Cross examination by Mr. English.

Q Is Mr. Hough now acting as inspector for your company? A No, sir.

Q When did Mr. Hough go off? A Well, according to my recollection, about two months ago.

Q Do you know why he was relieved of that position? A Why, we understood that Captain Goodall had been elected vice-president of the Metropolitan Company and he would make any necessary examinations and reports.

Q Captain Goodall as vice-president of the Metropolitan Steamship Company concluded to do this work himself? A Yes, sir.

Q Was that satisfactory to your company? A Yes, sir.

Q Do you know Captain Goodall? A Not personally.

Q Well, I mean by reputation? A I couldn't say as to that.

Q Mr. Hough, you said, was an able engineer recommended to you by somebody in whom you had confidence? A Yes.

Q Was Captain Goodall recommended to you in the same manner? A I cannot say as to that; our president, however, was satisfied.

Q And I suppose if the president was satisfied you had to be? A Naturally.

Q You don't know what operated on the mind of the president to satisfy him as to Captain Goodall?

The Court. I will exclude that. What difference does it make?

Mr. English. I don't know.

The Court. Well, if you do not know what difference it will make I exclude it.

Q At any rate you have no knowledge of any recommendation of Captain Goodall or anybody else, except the president informed you he would act as inspector thereafter? A Yes, that is all.

Q Do you know who recommended Captain Goodall to the president? A I do not; no.

Q What is the present insurance on the hull of the Harvard and Yale, each? A One million dollars each.

Q And the indemnity on each? A One million dollars on each.

Q And on the premiums? A Twenty-four thousand dollars each.

Q And on the earnings? A $95,600 each.

Q That is the present insurance you are speaking about? A Yes.

Q What was the date or the figures which you gave on your direct examination which were the same figures as you gave just now? A Those are the policies we have at present.

Q You are speaking of the present time? A Present time, yes.

Q To your knowledge has that amount of insurance been placed on those steamers? A Since the last renewal, which was April twenty-ninth, I think.

Q 1916? A Yes.

Q April 29, 1916? A Yes.

Q Have you any basis of comparison of the present increase and the previous increase? A Only my recollection that there has been a slight increase.

Q In what kind of insurance? A In earnings insurance.

Q Slight increase on the earnings insurance? A Yes.

Q Do you know how much? A I do not.

Q You spoke of bonds in the sinking fund, four hundred and twenty-two thousand? A Yes, sir.

Q They have been taken in under the mortgage but not cancelled? A Yes.

Q They are simply held? A Yes.

Q They do not pay coupon interest any more? A Oh, yes.

Q Oh, they do? A The increment goes to the sinking fund.

Q Does the Metropolitan Steamship Company pay the interest on these bonds? A Yes.

Q Do you know about a million bonds that

were taken in exchange for the release of the freight boats and the Union Wharf in Boston? A I didn't get the question.

Q It appears in this case that some years ago, 1910 I think, your company accepted a million dollars of bonds in consideration of which it executed a release from the lien of the mortgage on certain freight boats which this company owned, and on the Union Wharf in Boston? A Yes.

Q Do you know what the status of those bonds is? A Those are held uncancelled.

Q Do they pay interest coupons? A No, sir.

Q Then the remaining four hundred and twenty-two thousand are turned in under the sinking fund, but still pay their coupons? A Yes.

Q And the coupon interest goes to the sinking fund? A Yes.

Q Any other money come into the sinking fund? A Only what we allowed on the account in the way of interest.

Q What do you mean by that? Oh, you mean interest on the interest? A Interest on the deposit.

Q So the amount that is paid into the sinking fund is the exact amount of the coupon interest of these four hundred and twenty-two thousand of bonds? A With the annual payments, there are fifty thousand dollars paid in annually.

Q In addition to the coupons? A In addition to the interest on the bonds.

Q When that money is paid to your company by the Metropolitan Company how do you go about it to take up bonds for the sinking fund? A Under vote of the directors of the

company, of the Metropolitan Steamship Company, we advertised for proposals to sell bonds to the fund.

Q In other words, you gave the bondholders an opportunity to offer their bonds for sale? A Yes.

Q Is that the way you acquired those bonds? A Yes.

Q Do you know at what prices you acquired them?

Mr. Faulks. I object to that, if your Honor please, it has already been ruled on once by your Honor.

Mr. English. Yes, but under different circumstances.

The Court. What is the materiality of it?

Mr. English. It is very evident from the testimony we have had so far that it is going to be the effort of counsel to show that this management of the company is financially advantageous, so much so that they paid so much money, that all these bonds have been called by the sinking fund, as an index of the amount of the earnings of the ships. Now, what that is worth of course depends on what you paid; if you paid a dollar for a bond that is one thing, and if you paid a thousand dollars for a bond that is another, and it will reflect on the amount of the earnings of the ships and their consequent reduction of the mortgage debt by showing how much these people got on the sale of the bonds to the sinking fund.

Mr. Faulks. If your Honor please, as the witness says, advertisements were made for

these bonds. Now, the prices at which they are obtained may depend upon a great many different circumstances, it may depend on the financial condition of some of the bondholders; at a time of panic naturally the bonds would come in at a cheaper rate than they would another time; if a man had bonds up as collateral for a loan, and his account was closed out by his broker, he might have to sell those bonds to save something else. It does not seem to me that that is any proper evidence at all as to any of the subject matters involved in this suit.

Mr. English. This is not a forced sale at all, it is a voluntary act.

Mr. Faulks. It may be.

The Court. I will admit it, not for the purpose of showing the value of the bonds but for the purpose of showing what the company actually paid on account of the bonds. It might make considerable difference if these bonds were bought in at twenty-five rather than at par, with respect to the operation of the company. As it would appear now they paid four hundred and twenty-two thousand dollars on account of their bonded indebtedness, whereas they may have only paid $200,000.

Mr. Faulks. Yes, but the question goes to the financial condition of the company, does it not, as to the amount of its liabilities, and perhaps as to the value of its assets. Now whether a man had a million dollars of indebtedness a year ago who is only now charged with or shown to have a half a million dollars' worth of indebted-

ness has no bearing upon his present financial situation for the purpose of determining whether or not he is solvent. Let us assume that his creditors may have voluntarily cancelled their indebtedness rather than let them pay par for it, can you say from that that his financial condition at this time is otherwise than it is, that his liabilities are in fact in excess of five hundred thousand dollars.

The Court. No one would contend that.

Mr. Faulks. I do not see on what theory your Honor has in mind to admit evidence of this kind that has heretofore been excluded.

By the Court. You have offered evidence now showing that they have retired four hundred and twenty-two thousand of bonds. I am going to permit counsel on the other side to show how much money it took to retire those bonds.

Q When did you last advertise for and receive bonds for the sinking fund? A In November and December, 1916.

Q How much did you pay for the bonds which were taken in at that time? A I think they averaged seventy-eight and a half.

Q Do you know what the lowest was?

Mr. Faulks. I object.

The Court. I will exclude that.

Q Can you go back in your mind to previous times when bonds were turned in to the sinking fund?

Mr. Faulks. I submit that is not relevant.

Eugene W. Leighton, re-direct.

Q (*By the Court.*) Do you know, Mr. Leighton, how much has been paid out of the sinking fund on account of the purchase of these four hundred and twenty-two thousand of bonds? A Let me see, there have been five payments to the sinking fund of fifty thousand each, that is two hundred and fifty thousand.

Q (*By the Court.*) Two hundred and fifty thousand plus how much more? A Plus the interest on the bonds as they were purchased.

Q (*By the Court.*) Approximately in dollars and cents, what would that be? A Approximately three hundred thousand dollars, for a total.

Q So the purchase of four hundred and twenty-two thousand dollars of bonds, face value, represents an expenditure of about three hundred thousand dollars? A Yes.

Re-direct examination by Mr. Faulks.

Q I understood you to say that the insurance on all other property or assets, with the exception of earnings, has been the same or substantially the same from the time the company was incorporated? A Yes.

Q The increase you spoke of as having been made perhaps in April, 1916, was simply on the earnings? A Yes.

Q (*By Mr. Ward.*) Can you state the amount of bonds now outstanding in the hands of the company? A The difference between two million dollars and four hundred and twenty-two thousand dollars.

Q That would be one million? A One million five hundred and seventy-eight thousand dollars.

Mr. Faulks. Now, if your Honor please, I will put in as shortly as possible the minutes of the stockholders' meetings that we were about to put in when we adjourned yesterday.

I will ask that the company's stock book which bears the legend "Metropolitan Steamship Co. Stockholders' Minutes," be marked as an exhibit.

Marked Exhibit D. 32.

Mr. Faulks. I offer in evidence and call attention to the following parts thereof:

Pages 1 to 28 containing the company's certificate of incorporation.

Mr. English. That is already in evidence annexed to the bill.

Mr. Faulks. The certificate which is annexed to the bill of complaint.

The following sections of the by-laws: Section 2 of Article 2, appearing on pages 15 and 16. This section provides as follows: "The annual meeting of the stockholders shall be held on the third Friday in November in each year, at two o'clock p. m., if not a legal holiday, and if a legal holiday, then on the next succeeding business day thereafter, when the stockholders shall elect by ballot the directors for the ensuing year, as hereinafter in Section 1 of Art. 3 of these by-laws provided." Then I will leave out reference to proxies, and continue as follows: "At such annual meeting any other business authorized or required to be transacted by the stockholders may be transacted. Notice of which annual meeting shall be given either by publication thereof once in each of the three calendar

weeks next preceding the meeting, in at least one newspaper in each of the following places: Jersey City, N. J., and New York, N. Y., or by mailing a copy of such notice at least ten days prior to the meeting to each stockholder of record at his address as the same appears on the books of the company."

The bill charges, your Honor, that no notice of stockholders' meeting was ever given, and we show that the by-laws' requirements were complied with in every instance.

Mr. English. That raises a question whether that kind of notice was reasonable notice. I never heard of it before in a New Jersey company.

The Court. You mean as to the publication?

Mr. English. Publication, yes, sir.

Mr. Faulks. Well, it is the one that the stockholders of this company all agreed to at the time the company was formed.

The Court. But we have got to look a little bit through that. This was a one-man company really from the beginning.

Mr. Faulks. Yes, but your Honor what I mean is this: The one man who may now be said to own practically all of the capital stock of the company had nothing to do with it at the time those by-laws were framed and were adopted by all of the stockholders of the company.

The Court. Even at that time it was a one-man company, was it not? It was the

Assets Realization Company represented by McKinnon.

Mr. Faulks. Yes, but we are not under this bill, or under any of the proofs appearing in this case as I regard them, charged with anything that the Assets Realization Company may have done at the time it caused this company to be formed.

The Court. I am not saying that you are, but there is a great deal in Mr. English's suggestion that a notice of that kind, so far as an independent stockholder is concerned, an outside stockholder, is not reasonable, and a stockholder cannot be said to be bound by the acts of a majority of the stock, unless those acts were fair, and fair to all the stockholders, merely because they were ratified by a vote of the stockholders at a regular meeting.

Mr. Faulks. Now, if all of the stockholders of this company agreed that the notices of its meeting should be given in a certain way I do not see how it could be said that legally they could be required to be given in any other way.

The Court. Well, we will not argue it now.

Mr. Faulks. Also section 3 of the same article, calling for special meetings of the stockholders.

Also section 4 of the same article with reference to the notice of such special meetings, which reads as follows: This is all on pages 15 and 16, and I will read in that same connection section 5, which has to do with the same subject matter.

"Notices of each special meeting, and of each meeting held pursuant to any provision of statute, other than the annual meeting, stating the time, place, and in general terms the purpose or purposes thereof, shall be mailed at least ten days prior to the meeting, to each stockholder of record at his post office address as the same appears on the books of the company. A certificate by the secretary that such notice has been duly mailed shall be conclusive evidence of the mailing of such notice."

"Section 5. Unless otherwise expressly provided by statute, written notice of the time, place and purpose of a special meeting, if served personally upon any stockholder at least two days prior to such special meeting, shall be equivalent to the ten days' prior notice by mail in the preceding section provided for, and the stockholders so personally notified shall be deemed to have been duly served with notice of such meeting."

On page 17 I refer to section 1 of article 3, which has to do with the directors. Also to section 2 of article 3, which has to do with the filling of vacancies. Section 8 of article 3, on page 20, with reference to the meeting of directors. Also annexed to the minutes appearing on pages 30 to 55, being those of the meeting of the incorporators held November 19, 1909. I call attention to the same matters as I did yesterday in reference to the first meeting of the board of directors of the company.

Next, the provisions of articles 3 and 9 of the first mortgage, a copy of which is

set forth in the minutes just referred to. This being the article with reference to sinking fund and release provisions.

Next, pages 56 to 63, being the minutes of the meeting of December 2, 1909, special meeting of the stockholders at which the proposed decrease or reduction in the capital stock of the company from three million to one million five hundred thousand dollars was approved.

Next, pages 65 to 72, containing the minutes of the annual meeting of November 18, 1910. I call further attention to the fact that—

Mr. English. Could we have it appear who appeared personally and by proxy?

Mr. Faulks. Mr. English desires to have it appear that the stockholders present in person at this meeting were Thomas C. Hughes, Rodney, T. Martinsen and Adolph L. Engelke, and by proxy the Chilmark Company, 14,370 shares.

Mr. English. How much did the others hold?

Mr. Faulks. The other stockholders present in person held one share each. I also call attention to the various reports made at that meeting with reference to a sale of part of the company's property, the operating agreements made for the Yale and Harvard, the second mortgage, and the bonds issued thereunder. I desire to call the court's attention to the fact that Messrs. Martinsen, Hughes and Engelke, the individual defendants, were first elected directors of the company at this meeting. I wished that might dispose of this matter of

the notice that was given, and save a lot of time, and I think we probably can reach an agreement about it. The minutes show that the following notice of the meeting was published.

The Court. You need not read it, it is a notice of the time and place.

Mr. Faulks. Yes, notice of the time and place of the annual meeting was published, and that the notice stated that the meeting was to be for the purpose of receiving a report regarding the affairs of the company, and of acting on a proposition to approve acts of the directors to be reported to the meeting, and for the purpose of electing directors for the ensuing year.

The Court. The notice does not say anything really.

Mr. English. That notice is on page 70, I believe.

The Court. Might as well have said to transact business of the company.

Mr. English. I do not agree with your Honor on that.

Mr. Faulks. The minutes further show that this notice was published in the Jersey Journal, a newspaper printed and published in Jersey City, in the County of Hudson and State of New Jersey, on October 29, November 5 and November 12, 1910, and also in the Morning Telegraph, a newspaper printed and published in the city and county of New York for three successive weeks, beginning on the 29th of October, 1910. Now, these publications were made under Mr. Nicholson's direction, if your Honor please,

and he knows as a matter of fact that they were made.

Mr. English. Then let him testify to that.

Mr. Faulks. The question I want to ask Mr. English at this time is whether he wants us to arrange to have the representative of the newspapers here.

Mr. English. Oh, no, I have no disposition to do that. What I say is, we never heard of it.

Mr. Faulks. The next reference is to the minutes appearing on pages 73 to 79, being the minutes of the annual meeting held November 17, 1911. I call attention to the reference to the report made by the president with regard to India Wharf; to the ratifying motions; to the election of directors, Messrs. Hughes, Martinsen and Engelke, and to the similar notices of the meeting, and the fact that they were published in the same New York newspaper for three successive weeks beginning on the 28th of October, 1911, and in the same Jersey City paper on October 28, November 4th and 11th.

I refer next to the minutes of the annual meeting of November 15, 1912, appearing on pages 80 to 87, to the ratification resolutions adopted at that meeting, and to the election of Messrs. Hughes, Engelke and Martinsen as directors of the company, and to the same notice as heretofore, with the same publication as was made before.

Mr. English. I would like to have it appear, if your Honor please, that at this meeting the minutes show that the stock-

holders personally present were Messrs. Engelke, Hughes and Martinsen, each holding one share, and the stockholder by proxy present was the Chilmark Company, represented by Douglas Nicholson, for fourteen thousand three hundred and seventy shares.

The Court. That applies to the meeting of November, 1911, also, does it not?

Mr. English. The same fact applies to the meeting of 1911, appearing on page 65.

Mr. Faulks. Next, to the minutes of the annual meeting of November 21, 1913, appearing on pages 88 to 94; the same stockholders present and represented; to the confirmatory action at that meeting, and to the election of Messrs. Hughes, Martinsen and Engelke as directors.

Mr. English. That covers pages 88 and what?

Mr. Faulks. 88 to 94. Next, to the minutes appearing on pages 95 to 103, being those of the annual meeting of November 20, 1914, at which the stockholders present were: Mr. Engelke one share, and the Chilmark Company fourteen thousand three hundred and seventy shares; to the confirmatory action; to the publication of notices of the meeting, as in the previous cases, and to the election of Warren D. Chase, Hugo R. Von Wessely and Adolph L. Engelke as directors.

Next, to the minutes of the annual meeting of November 19, 1915, pages 104 to 105. Present: Chilmark Company, as far as the directors show.

Mr. English. Fourteen thousand three hundred and forty shares.

Mr. Faulks. The secretary was also present. The usual proofs of publication, and the re-election of Messrs. Chase and Von Wessely as directors, and the election of Louis W. Chism as a director.

Also to the minutes of a special meeting of stockholders held on June 12, 1916, pages 106 to 109. The persons present were Warren D. Chase, one share; George A. Fernald, of the firm of George A. Fernald & Company, fifty-four shares; H. R. Von Wessely, one share, and the Chilmark Company, fourteen thousand three hundred and seventy shares; the Chilmark Company being represented by Warren D. Chase. The minutes state that Mr. Higley, treasurer of the Hudson Navigation Company, attended the meeting without proxy, stating that Mr. C. W. Morse was in Europe, and that he would have obtained a proxy from Jennie R. Morse if he had thought it necessary so to do. The secretary then presented the call of the meeting, together with proof of giving notice thereof by mail in accordance with the by-laws of the corporation, to the stockholders of record whose addresses appeared upon its books, and to personal service, in accordance with the by-laws, upon the stockholders whose addresses did not appear upon the books. Then follows the treasurer's report showing the expiration of the operating contract with the Pacific Navigation Company, and the inability to effect a renewal of it, the monthly arrangement for the opera-

tion of the boats by the Pacific Navigation Company for the account of the Metropolitan Steamship Company; that the Pacific Navigation Company received for its service and for furnishing facilties eleven per cent. of the gross receipts, and that this operation had not been satisfactory, and that it was proposed if possible to make an arrangement for the operation of the boats which would be certain in resulting that that the company received a definite amount of income therefrom. Mr. English desires me to read that part of the minutes. "By certainly receiving therefrom at least sufficient income to pay its expenses and fixed charges." The report goes on to state that the time the meeting was called the directors of the company had expected to have a definite proposition either from the Pacific Company or the Pacific Navigation Company for the operation of its steamships, but that the negotiations toward this end did not sufficiently mature so as to make this possible. The directors would be glad to receive suggestions as to the best arrangement to be made for the operation of these steamboats by any of the stockholders, and to give them full consideration. Mr. Fernald thereupon said he had nothing to suggest, and did not know of any plan which would be of advantage to the company, and that he had no objection to offer to what was being done. The treasurer then went on to state that negotiations were being continued with the hope of obtaining a definite proposition for

the operation of the steamships on terms which would be favorable to the company, and at the proper time he intended to move for an adjournment of the meeting in order that the stockholders before final action was taken might consider and pass on any proposition that might be made, or plan that might be developed. That the ratifying action thereupon passed, and that George A. Fernald alone voted against this ratification and filed a protest.

Then to the minutes appearing on pages 110, 111 and 112, showing various adjournments of this meeting until August 8th, 1916. Then that the further session of such meeting was held, at which the following stockholders were present: Warren D. Chase, one share; H. R. Von Wessely, one share; the Chilmark Company, fourteen thousand three hundred and seventy shares. That the treasurer thereupon reported the various efforts which had been made to secure a contract from the Pacific Navigation Company, and that it terminated without success. That thereupon negotiations were taken with the Pacific Alaska Navigation Company, a corporation of Maine, well established on the Pacific coast and successfully operating the so-called Admiral line of ships. That these negotiations had been somewhat prolonged but finally resulted in a proposed contract to be submitted at the meeting. That the directors regarded the contract as advantageous and had directed its execution and delivery, provided it was approved by a vote of stockholders holding at least two-thirds of the capital stock of

the company. The proposed contract was then submitted, and it appears attached to page 115. That thereupon the stockholders approved of and authorized the execution and delivery of this contract for the operation of the company's steamships Yale and Harvard on the Pacific coast for the period from September 1, 1916 to December 31, 1921, with the option on the part of the Pacific Navigation Company to extend such contract for the further period of five years.

Also the minutes of the annual meeting of November 17, 1916, pages 118 to 120, at which the stockholders present were Warren D. Chase, representing the Chilmark Company.

Mr. English. No, that is wrong. Warren D. Chase was present with six shares, and the Chilmark Company was present by Douglas Nicholson with a proxy for fourteen thousand three hundred and seventy shares.

Mr. Faulks. That is right. Proof of the usual notices of publication.

Mr. English. In the same papers?

Mr. Faulks. It does not say. Ratification of the actions taken by the directors at various meetings. The election of Messrs. Chase, von Wessely and Chism, as directors of the company.

Mr. English. If your Honor please, I think in connection with the minutes of the special meeting held on June 12, 1916, counsel ought to produce the written protest which the minutes say was filed by Mr.

Fernald, or else let us have it to put it in as part of our case.

Mr. Faulks. We will very gladly produce it and put it in if you want it.

J. S. MORRIS GOODLOE, sworn.

Direct examination by Mr. Faulks.

Q Where do you live? A New York.

Q And what is your business or profession? A Certified public accountant.

Q How long have you practiced that occupation? A Twenty-two years.

Q And are your headquarters in New York? A Yes, sir.

Q Are you a certified public accountant of that state? A Of New York, also Ohio, Colorado, and some other states.

Q Are you associated with any firm of certified accountants? A Firm of Patterson, Teele & Dennis.

Q With offices in New York? A Yes, sir.

Q Have you specialized in any particular kind of work? A Particularly in transportation matters, railroads, steamer lines, and so forth.

Q Ever done any work for the New Haven company or any of its subsidiaries? A No, sir.

Q Name shortly any of the other transportation companies for whom you have done accounting work? A Hocking Valley Railroad, Central Railroad of Georgia, Ocean Steamship Company, Southern Railway.

Q That is enough. A Seaboard.

Q Have you at any time been employed to do any work for the Metropolitan Steamship of New Jersey? A I have.

Q And when were you first employed in that capacity or in that way rather? A About two years ago.

Q And was that at the time when you understood that this case was to come up for trial in some comparatively near future? A I so understood at that time.

Q What was the nature of the first work that you did for the company? A To determine its financial condition at the nearest possible date.

Q Well, for the purpose of being a witness in this case? A Yes.

Q To testify what its condition was as of that date? A The financial condition and the earnings.

Q What work, if any, have you done for the company since then? A I have made several statements from time to time showing the financial condition at various dates; the earnings and expenses, net income, up to those dates; preparing their income tax statements, general supervision of their accounts and records.

Q Did you make a trip to the Pacific Coast for the company for any purpose? A I went to Los Angeles and San Francisco last June for the purpose of examining the accounts of the Pacific Navigation Company insofar as they related to their contracts with the Metropolitan Steamship Company.

Q Did you do that work while you were there? A I did; I was there during June and July.

Q What was the purpose of your investigation out there at that time? A To determine whether or not the reports and statements sub-

mitted by the Navigation company accurately stated the transactions with the Metropolitan company; whether or not the financial condition of the Navigation company was such that it might meet those obligations and discharge its indebtedness.

Q What was the result of your examination out there at that time? A That the statements of earnings reported by the Navigation company were substantially correct.

Q When you say substantially correct, what do you mean by that? A I mean that there were some minor differences, clerical errors in some respects; there were some few differences as to matters of principal, particularly insofar as related to the traffic balances at the close of the contract, termination of the operating agreement, which we assumed were a liability of the Metropolitan company, and that the Navigation company was responsible to the Metropolitan company for any undischarged liabilities in that respect, such as outstanding tickets, prepaid freight accounts.

Q There was some difference of opinion as between the two companies with reference to matters of that kind? A Yes, sir.

Q Except as to that, and as to these clerical errors that you have mentioned, how did you find the books and records of the Pacific Navigation Company, compared with the results shown as to the debit or credit balance between the two companies, with the books and records of the Metropolitan? A Reasonably correct.

Q Did you make any investigation, and if so what character, to ascertain whether or not the Pacific Navigation Company was in a financial condition to pay any balance of indebtedness

which might be found due from it to the Metropolitan Steamship Company? A I did investigate their financial condition; that is, in respect to current assets and liabilities; those which were available for liquidation of their account, and I found that they had a cash balance of about two hundred thousand dollars.

Mr. English. Speaking of what company now?

A The Pacific Navigation Company. That they had current assets in excess of obligations, and current liabilities payable out of those liquid assets, of approximately two hundred and fifty thousand dollars.

Q And of what date was this? A This was as of July first.

Q 1916? A Yes, sir; with the exception of their obligation to the Metropolitan comapny, but they had at that time between two hundred and two hundred and fifty thousand dollars net available assets to meet the obligation of their debt to the Metropolitan company.

Q How thoroughly did you go into that matter? A I verified their assets in the usual way, satisfied myself that their accounts receivable were current bills which were being collected from time to time, the usual result of transportation companies having to carry accounts with other companies, with their agents; their cash was available and in bank, not subject to lien, and in general their accounts were good.

Q Did you ascertain whether the cash reported on hand or in banks was in fact on hand or in banks at that time? A The cash on hand at the end of June, June 30, 1916, was de-

posited within two days following cash collections; their bank balances were verified by the bank passbooks or bank statements.

Q Have you prepared statements with reference to the financial condition and assets and liabilities of the Metropolitan Steamship Company of Maine as of various dates? A Not of the Metropolitan Steamship Company of Maine.

Q I meant to say Metropolitan Steamship Company of New Jersey? A Metropolitan Steamship Company of New Jersey, yes, sir.

Q And from what have you prepared these? A From the books and records of the company.

Q And do they accurately and correctly portray the conditions appearing on the books? A They do.

Q And correspond with the company's books and records? A Yes.

Q Now I will ask you to take up first, if you will, the large sheet headed "Metropolitan Steamship Company of New Jersey, recapitulation of income, deductions from income and net income or deficit, showing totals and average results per day from November 15, 1909, date of organization, to December 31, 1916."

Mr. Faulks. I will have this marked for identification now so as to avoid confusion.

Marked D. 33 for identification.

Cross examination by Mr. English.

Q What books did you make this paper from? A Various books, records; I can hardly say that I made it from any one specific book.

Q I do not suppose you did; it was a combination or number of books I imagine? A Yes, sir; combination of all their books and records.

Q Who handed those books to you? A I think Mr. Chase; some of them I got from Mr. Nicholson; some statements that we got from the American Trust Company of Boston, trustee under the first mortgage, the records of the trustee under the second mortgage.

Q Did they take the books to you, or did you go to their office and pick out what you wanted? A Both.

Q What were some of the books of the company, apart from these records of outside institutions like the Trust Company, that you examined. A The ledger, cash book, journal.

Q Do you know who had kept those books that you examined? A I do not.

Q Had they been properly kept? A No, sir.

Q What was the matter with them? A Entries were put on at irregular dates, transactions were recorded sometimes considerably after the time at which they accrued and sometimes before.

Q Before they accrued? A That is, yes; an item would be entered on as bond interest when it was actually paid; if they paid it a few weeks before it was due it would be entered on the books at that date as an item of interest.

Q (*By Mr. Faulks.*) That is of the date it was actually paid and not when it was due you mean? A Yes.

Q What about entries that had been made after their actual date? A Some of the entries from the sinking fund, trustee under the first mortgage, would be accumulated, whenever they would get a statement from the trustee; those were rather irregular at times, sometimes wouldn't get a statement for twelve months,

and transactions in that account would not appear on the books until that period.

Q You would not say that the entries on those books were made in the everyday course of business, they were made some of them at other times? A There was no everyday course of business in the method of keeping those books; they did not, I believe, have any regular bookkeeper.

Q Who had physically made the entries, do you know? A I do not know, sir.

Q More than one handwriting? A Several.

Q What do the books purport to show, I mean describe them generally, as what? You spoke of a ledger. A Cash book, journal.

Q Were the cash book and journal posted in that ledger? A Yes.

Q Both into the same ledger? A Yes.

Q Were the postings accurate? A Reasonably so, so far as the entries went, clerical accuracy, yes.

Q But they did not cover all the entries? A No, sir.

Q Did you, in connection with those books, get any of the cancelled checks and check stub books? A We had a great many, I do not know whether we had all of them or not.

Q You would not say you had them all? A No.

Q Without all of them I imagine from what you say you could not prepare an absolutely accurate report, could you? A Yes, from the record that was on the books as to their receipts and disbursements which would fit into the check books which we did have.

Q I understand that. You did not answer my question. My question was if you did not

have all of the checks you could not tell whether the entries in the books would fit in properly or not, could you? A No, sir.

Q The accuracy of your report in one respect would depend on whether you had been furnished with all of them checks and check stubs, would it not? A No, I think not.

Q If you did not have them all could you make an absolutely accurate report? A I have reason to believe that the results that were shown were—

Q Oh, I understand that.

Mr. Faulks. Let him finish.

Q I do not say for a moment that you did not accurately set forth—

Mr. Faulks. I submit the witness is entitled to answer the question.

The Court. Yes.

Q Oh, is there anything more you want to say?

Mr. Faulks. I ask that the question and the answer, as far as the witness had gotten with it, be read.

Q (Question read.) A —were in accord with the actual facts, for the reason that the balances which would appear on the books from time to time corresponded with those check books and checks which actually were found and produced. Some of the records, we could understand why we couldn't get them, because we were advised that they were destroyed by fire, but by all reasonable tests, and customary tests, we were satisfied that the cash account as stated showed the actual receipts and disbursements.

Q Between what dates was it that you could not get any of those checks and books that had been destroyed by the fire? A Largely those prior to 1910.

Q Your report purports to set up figures from November, 1909; what is the earliest date at which you had access to all the checks and check stub books? A I think it was about some time during 1910.

Q Well, there are twelve months in 1910; which one of them? A I am not sure just what time, but my impression is it was the latter part of 1910.

Q So for about a year then you were without the benefit of the checks and check stubs? A Yes, some of them.

Q What other books of record were you deprived of in making up your report from November, 1909, to November, 1910? A The books of what were called the New York Agency.

Q I never heard of that before. What was the New York Agency as you understood it? A That was the operating end of the business covering the transportation matters.

Q And those books were not available? A No, those we were told were destroyed by fire.

Q And those were supposed to show the receipts and disbursements in connection with the operation? A Yes.

Q What other books from November, 1909, to November, 1910, were you unable to get hold of? A I do not recall at this moment. We had from other sources certain statements and data which had been taken from those books prior to the fire, which were not destroyed.

Q What original books of entry did you have furnished you for the year from 1909 to 1910? A Ledger, journal, cash book.

Q They were not destroyed in the fire? A No, sir.

Q The check books were? A I don't know whether all of them were or not.

Q Do you remember seeing any of them? A No, I do not.

Q And the books of the operating end, the New York Agency, were not available? A No, sir.

Q As a matter of fact those New York Agency books were the most valuable, along with the check books, or would be if available, in making up your report? A I do not know; I do not know what was on them.

Q You do not know because you did not see them. But from your wide experience in auditing books of transportation companies, wouldn't you say that the operating books showing disbursements and receipts of the operations of given ships are pretty valuable audit to a man making up a report? A It would be valuable, but not the most important.

Q Pretty important? A Essential; they weren't as important as the general books would have been.

Q Did you have the general books? A We did.

Q What were they? A Ledger, cash book and journal.

Q They were the books that had these sort of haphazard entries in? A They were the books to which the results of these New York Agency accounts were carried.

Q You had no means of knowing whether they were carried accurately or not? A All my experience has been—

Q No, no, pardon me; we are not concerned with your previous experience in anything.

The Court. You are because you asked him the question; you asked him whether he had any means of knowing: now that gives him an opportunity to answer almost anything he wants to.

Mr. English. If your honor rules that way I won't interrupt; I thought it required a given answer or statement of fact.

Q (Question read.) A My experience has been, covering a good many years, and particularly with transportation companies, that the results from agencies are carried accurately to the books. If there is any manipulation or diversion it is not usually done, in fact I have never known it to be done through an agency account.

Q That is the only basis that you can form a conclusion on, your experience in other concerns? A No, because other statements which were brought on to the books, and which we were able to verify, indicated that their practice was to state them according to that information.

Q Who were the individuals in charge of this New York Agency, did you learn that? A I did not.

Q Do you know who had made the entries in those books that were destroyed? A No.

Q Or where they were kept, I mean what physical place? A I do not.

Q And so of course you cannot accurately check up from those books which you had the

accuracy of the entries from these agency books, can you?

The Court. I will exclude that. I will assume he cannot.

Q What is the source of your knowledge about their destruction? A Hearsay.

Q Who told you that? Mr. Nicholson told me at one time, Mr. Chase told me.

Q And did he tell you where the fire was that destroyed these books? A He may have said something about it, but I do not recall.

Q You haven't any definite knowledge now, from hearsay or otherwise, as to where the fire was or where the books were when burned? A I have not.

Q Did either one of them explain to you why it was that some of the books were burned and others not? A No, sir.

Q Was any explanation given to you as to why some of the books should have been in one place and some in another? A Yes.

Q What was the explanation? A Well, the books relating to the agency were at the usual place of business of that agency; the general books were in the general office, or in the custody of the general office of the company.

Q Where were the check books and check stubs that were destroyed? A I do not know.

Q Were they at the agency's office? A Inasmuch as practically all of those transactions were handled through the agency, I assume that they were.

Q If the agency books were at the agency office, and the books like the journal, ledger and cash book were at the other office, what opportunity was there afforded the clerks writing up the books in the general office to get at

the books in the agency office, do you know? A From statements rendered by the agency.

Q Then the clerks in the main office were dependent on statements taken from the original books of entry and did not have the benefit of the original books of entry direct? A As is usual in such cases, that is true.

Q I am not concerned with whether that is usual or not. Is that the fact? A That is the fact.

Q Of course the accuracy of the entry in the books in the main office depended in the first instance on the accuracy of the transcript as it was made from the books at the agency's office. A Or the reports from the agency.

Q Did you have any checks or check stubs furnished you covering the period from November, 1909, to November, 1910? A Yes.

Q Was it explained to you why they were still extant and others not? A Some of those were checks of trustees handling special funds which were held in the custody of that trustee to persons handling those funds.

Q They were not checks of the Metropolitan Steamship Company? A They were the funds of the Metropolitan Steamship Company.

Q (*By the Court.*) That is not the question. They were not the checks of the Metropolitan Steamship Company. A They were signed in one instance, as I recall by Birdsey Case, trustee for the Metropolitan Steamship Company.

Q (*By the Court.*) Your answer is that they were not checks of the Metropolitan Steamship Company. The question is perfectly plain. A I didn't quite grasp that question then.

Q (*By the Court.*) The question is whether or not they were checks of the Metropolitan

Steamship Company, that is, checks signed by the Metropolitan Steamship Company in the name of the Metropolitan Steamship Company? A They were not.

Q Did you have any checks of the Metropolitan Steamship Company bearing date between November, 1909, and November, 1910, to examine? A None that I recall.

Q Did you have any checks bearing date about March 5th or 6th, 1910, of the Metropolitan Steamship Company? A No.

Q So you had no checks then of the Metropolitan Steamship Company of any description between the dates of November, 1909, and November, 1910? A About that date, I cannot be definite as to the exact date, whether it was October or November.

Q I am assuming that, colloquially a year? A Yes.

Q I am not so much concerned with the exact time, but as to whether you had any physical check during that period; you didn't have any you say? A No.

Q You did not have the transportation books during that period? A No, sir.

Q You thought you could get other data to enable you to check up the amounts? A Yes.

Q Did you get other data to enable you to check up what the payments were made for? A The papers?

Q What the payments were made for. A Yes.

Q What data was that? A Partly certified statements.

Q Made by whom? A The auditors.

Q By the auditors of the company? A Yes.

Q What had those certified statements been made up from, do you remember? A From the original books, as I was advised, of the New York agency.

Q Do you know who those auditors were? A Barrow, Wade & Guthrie.

Q During what dates did they purport to cover? A They covered some time during the summer of 1910.

Q Any other accounts the auditors furnished to you? A No.

Q So this part of your report covering the year, roughly, from November, 1909, to 1910, is partly made up of the audit furnished you by those accountants, Barrow, Wade & Guthrie, or whatever it was? A From the books of the company.

Q You already said you didn't have all the books of the company? A Such books as are now existent.

Q So this is a joint result of the books of the company now in existence, plus the data furnished by the report of those accountants? A The books are corroborated by that report; the general books of the company show those transactions.

Q If you didn't have the reports of the auditors could you have made up this account as it is now? A Not perhaps so much detail.

Q What else besides the books of the company did you have to get to enable you to make up the account as it is now presented to us? A Statements of the trustees.

Q Statements of the trustees. You mean Mr. Greening, trustee? A For instance, and the American Trust Company under the first mortgage.

Q Any other trustee? A There was a Mr. Case, trustee of certain funds, who made up a statement of his account.

Q You did not examine the original accounts of those trustees, you took their statements? A Those statements were signed by them.

Q I understand that. A Yes.

Q They were signed by them, but you did not check up to see whether what they had signed was an accurate transcript of their books? A Yes, those statements were in one case, at least, the statement was kept.

Q What you call the book was the statement which was handed you? A Yes.

Q Who was that individual? A I think it was Mr. Case.

Q What about Mr. Greening; what was the source of your information as to the accuracy of his statement? A Checks and check books, check stub books, and the original cancelled checks and receipted bills.

Q What about the American Trust Company? A Their certified statements and their receipted bills.

Q What other outside information besides the books of the company then available did you have to get to make up the statement as it now appears here? A Statement of certain disbursements and receipts by Mr. Doland, accompanied by some of his checks and paid bills.

Q Mr. Doland? A Doland, I believe, was his name.

Q Who was he, do you know? That is a new name to me. A He was some person who handled some of the funds for the company.

Q Where was he located? A I don't know where he is located.

Q Well, I mean at the time he was supposed to have handled the funds? A I think he was located in Hartford.

Q And in what capacity, as representing the company, did he undertake to handle the funds? A As trustee of certain funds to insure their application.

Q You say certain funds; what funds? A I think there was about a—I do not recall the exact amount; the books will show; if I may have the ledger I can tell you the amount he expended and the volume of those funds.

Q Is the ledger here? A On the table in front of you, sir.

Q That is four trustees you told about; were there any other trustees? A I do not recall any others.

Q Do you know what Mr. Doland was trustee for? A Certain funds, part of the proceeds of some second mortgage bonds.

Q And who was he receiving the money for; who was the *cestui que trust?* A It was money that was expended largely for expenses in connection with the trip of the boats to the Pacific Coast.

Q Where did the money come from which went to Mr. Doland's hands to be paid out for those expenses? A I do not recall exactly, but if you want to have me testify exactly as to that I can do so by refreshing my memory from the books.

Q. All right, do so. A The account of Mr. Doland is charged with seven hundred and fifty thousand dollars, the proceeds of second mortgage bonds sold October 11, 1910; it is charged with cash for check on City Bank of Hartford to close his account, $808.34.

Q Does it appear how Doland disbursed that seven hundred and fifty thousand dollars?

The Court. I exclude that; no use of going into that at his time.

Q In making up the account which you did for the year from November, 1909, to 1910, did you discover a payment of a large sum of money for bonds? A For bonds?

Q Yes. A That does not appear in the income account in connection with the financial statements.

Q I am not distinguishing in my mind between any particular kind of account.

The Court. This is a pure income account.

Mr. English. You mean this sheet is.

The Court. Yes, and that is all you can ask about.

Q Well, this undertakes to show the receipts and disbursements of income? A Yes.

Q Well, now, take the second column of your statement, Atlantic Coast operations prior to March 5, 1910, from November 15, 1909, to March 5, 1910; can you say whether any of the $48,302.94 which you have charged for insurance and taxes went for anything besides insurance and taxes? A My recollection is that about twelve thousand dollars of it went for general expenses; the exact amount I cannot say from memory.

Q And generally, what were general expenses? A Salaries of officers and clerks; quite a little item in there was settling up claims, accounts of the old company which were inherited by this corporation, and that expense was included.

Q (*By the Court.*) That was not fair to charge against the operating income, was it? A Yes, in that the settlement of the claims are taken into that.

Q (*By the Court.*) I do not mean the general financial statement of the company, whether it would be fair to charge it to capital or income, but as to determining whether or not the operation by certain boats was resulting in a profit, it was unfair to charge against the operation of those boats those old claims. A It wasn't the old claims, it was merely the expense of some of the clerks.

Q (*By the Court.*) Even that, was it not unfair to charge against the operation of those boats expenses of that kind? A No, for the reason that it was to protect the company against that, and largely to recover from other corporations who shared in that; the amount recovered in liquidation of claims against other companies was considerably more than the expenses involved.

Q (*By the Court.*) The income received from that is not included in the $11,389.55, is it? A No, sir, but it was the claims which were so involved; that is, part would be against the new company, that is, the New Jersey company, and part against the Maine company. It required clerical work simply to determine and sift those out; the mere cost of that clerical work is included in the expense, but to an inconsiderable figure; it is not considered to be a matter of sufficient importance to apportion back and forth, on any items of importance; they have been allocated to the period which would be affected; as I recall that it was something like three or four hundred dollars total, part of

which would be applicable to the Maine company and part to the New Jersey company.

Q (*By the Court.*) Are there any other items like that? A No, sir, not that I know of.

Q This undertakes to show the receipt of income and the disbursements?

Mr. Faulks. I think that is hardly cross examination as to the qualification of this witness.

Mr. English. You offered this paper in evidence, as I understand it.

The Court. It has not been offered yet.

Mr. Faulks. No, I had it marked for identification. Whenever Mr. English has finished his cross examination with reference to the qualifications of the witness I want to offer it in evidence and examine the witness with regard to it.

Mr. English. Oh, I have no disposition to question his qualifications. I expect he is a capable accountant, but I had in mind that counsel wished to show him this paper and ask him to certify to it, and eventually get the paper in evidence. Now I want to show how it is made up, and what it shows, and whether it is accurate.

Q This undertakes to show the amount of the income received and the disbursements out of that income as received during the date set forth on this paper, does it not? A It does.

Q Back in 1909, where was the source of the income between November 15th and March 15th of $11,389.55? A From the net operation of certain freight steamers.

Q Between those dates that is all the money which the company earned from operation, is that right? A Yes, sir.

Q That is the only income it had, is that right? A That is all.

Q How in the world could you charge out of that income of eleven thousand and odd dollars forty-eight thousand and odd dollars on the theory that this paper showed the disbursement of money which was only received for income?

The Court. Well, Mr. English, that is not exactly what the witness has said, or at least it is not what he intended to say.

Mr. English. It is what he is coming to now.

The Court. What that purports to show is what is actually received from income and what should be chargeable against income, whether it is actually paid out of income or not.

Q Of what period are those expenses which are charged in there against that income; did they arise between the dates of November 15, 1909, and March 5, 1910? A As far as we could determine it it included an allocation of insurance premiums.

Q You talked earlier in your testimony about other claims that had arisen before in the previous operation? A No; I beg your pardon, I did not refer to claims; I said the settlement of claims, the expense incidental to the investigation as to whether or not they were a charge against this company.

Q And those claims had arisen during a previous operation of the steamers? A Some of them it appeared had, but if they were not

investigated there would be no reasonable basis for this company to refuse payment of them.

Q I am not disputing that, I am trying to find out how you made your basis for the charges; you did charge those things against the income? A The expense of investigating such claims, but not the payment of them.

Q What else did you charge in that related in any way, either directly or indirectly, to previous operations? A Nothing else I know of, unless the expense of organizing and incorporating the company, which is included in that period.

Q Does it appear here how much was paid out for sending these ships to the Pacific coast? A It does.

The Court. You are going now into the general examination.

Q (*By the Court.*) This figure $84,392.86, where did that come from, that is from March 6, 1910, to October 10, 1910, where did that figure come from, how did you arrive at that figure? A From the books that are here in court.

Q (*By the Court.*) Let me see that. A It won't show that exact figure, but it will show a combination of those figures, it would be an allocation of certain of these figures. For instance, that eighteen thousand dollars, and also operations $12,799. January, 1910, New York Agency expenditures $6,400. New York Agency March 5, also operations, $12,810. Depreciation of furniture and fixtures $14,000. There are similar items on the other side. The ultimate distribution of those show a certain part of them as earnings and a certain part as expenses.

Q What was the furniture and fixtures that depreciated fourteen thousand dollars and more?

A That is a part of item entered on and charged against item of thirty-one thousand nine hunderd and thirty-four dollars, through income, which is a profit made by the Metropolitan of New Jersey in connection with the purchase of certain assets acquired from the receivers of the Metropolitan of Maine; that $14,000 was charged off as against that, leaving a net figure; the original profit was considerably larger than that.

Q You do not understand. What was the physical stuff that had depreciated to such an extent? A I don't know.

Q You do not know whether that is a fair charge or not? A I know that was some of the equipment and probably purchased, part of the assets purchased from the receivers of the Maine company, and when it was charged off it simply reduced the amount that was profit.

Q And you do not know what it was? A I do not.

Q What was that, an operating expense in any way? A Nor sir.

Q Have you got it charged as such? A I have not.

Q (*By the Court.*) Yes, you have. A No, sir, I have not.

Q (*By the Court.*) No, but in fact you have, you have not actually on this statement, but if you have reduced the other income. A That is not an operation account, that is other income aside from operation.

Q (*By the Court.*) Then what place has it in here? A Because it was a profit. This is the result of net profits or losses for that period.

Q (*By the Court.*) Just a moment, I do not understand you. A If they bought certain

properties for one hundred thousand dollars and sold some of it for one hundred and fifty thousand dollars, and determined that that property sold was two-thirds or three-quarters of the total, that would leave them a property value of property sold one hundred and fifty, property left fifty thousand; they afterwards found what was left had depreciated and had no value, and charged that off so as to make the total charge against the amount received the total cost. In other words, included in that was a worthless asset of $14,000. This item has been stated at forty-five thousand dollars less worthless items written off fourteen thousand dollars, and the net result would be $31,000.

Q The other income really wasn't income from operation, was it? A No, sir, that is not so stated.

Q I understood you to say this paper purported to show amount of income from operation, and disbursements out of that income? A It showed the income from operation, which is stated specifically as such; there might be other items of income which would not be termed operation, the corporation may do some things to produce a profit.

Q What you have charged as income from other sources than operation is really putting a value on property which was bought at a sale, is it not? A And sold.

Q (*By Mr. Faulks.*) That is the difference between the purchase price and the selling price? A Yes.

Q The differences in those instances happened to be what they have charged there as depreciation? A No, sir, it happens to be the

difference between the proceeds of the sale and what they paid for that property.

Q Do you know what the proceeds of the sale were, do you know what they paid for the property there charged at $14,000 depreciation?
A I know what the books show.

Q What do the books show?

Mr. Faulks. Isn't this cross examination on this statement?

The Court. I will let the witness answer your question now.

Mr. Faulks. I offer this statement in evidence, if your Honor please.

Mr. English. I object to it. In the first place it is not a statement made up solely from the books of this company. In the second place, by the witness' own admission, it has got in other things which do not relate to the period of time or the matters which are supposed to be covered by the statement. And furthermore it is not the best evidence; the books are here in order to be testified from.

The Court. I will admit the statement for what it is worth as a recapitulation of the books, as illustrated by the books. Counsel can examine on the books if he desires.

Marked Exhibit D. 33.

Further direct examination by Mr. Faulks.

Q Now I will ask you to explain on the record the form in which you have prepared this statement of recapitulation of income and deductions from income and net income or deficits,

giving us first the various periods which it covers; give us that first.

The Court. Does not that speak for itself?

Mr. Faulks. I thought your Honor would like to have it on the record, rather than pick it out from this exhibit.

The Court. No, I think the exhibit is perfectly clear.

Q This statement gives the net income or deficit for each of the periods of time noted at the top of it, and also the average of the same figures per day and per year for each period of time so noted? A It does.

Q And does this statement show all of the income, and likewise all of the deductions from income, as they appear on the books and records of the company, as supplemented in the way you have already testified to by the other records you had? A It does.

Q And accurately shows the financial condition of the company so far as income and outgo of income funds is concerned during the period covered by the statement? A It does.

Q Have you also prepared comparative statements of the financial condition of the Metropolitan Steamship Company as of certain specified dates? A I have.

Q As of what dates? A November 15, 1909, the date of the organization.

Mr. English. This is the comparative statement of what?

The Court. Metropolitan Steamship Company, of its financial condition as of certain dates.

A November 15, 1909, the date of the incorporation, and October 10, 1910; December 15, 1915; and December 31, 1916.

Q In the case of the statement prepared as of November 15, 1909, is that as of the opening of business on that day? A It is on the opening of business, the initial entry.

Q How is it in connection with the statement of October 10, 1910, was that before or after the second mortgage bonds were issued? A Before they were issued they were authorized and signed on October 10, but the actual proceeds were not applied or the bonds, according to the records, actually delivered until the 11th of October.

Q That statement is prepared as of a time before those bonds were issued? A Before those bonds were issued.

Q (*By Mr. English.*) Are you speaking of the second bonds? A Second mortgage bonds.

Q The statements of December 15, 1915, and December 31, 1916, are as of the close of business on those respective days? A They are.

Q Do you understand that December 15th was the day upon which the operating agreement between the Metropolitan Steamship Company and the Pacific Navigation Company terminated? A I understand that that was the case.

Q These which you have prepared, have they been prepared from the books and records of the company in the same way as the other statements about which you have already been interrogated? A They have, with the exception of the fact that the later statements, the later dates are not exactly in accord with the books of the company now in existence.

Q (*By Mr. English.*) May we have the date when they began to be in exact accord with the books? A About June, the books were brought up to date and fully written up during June and July, 1915.

Q (*By Mr. English.*) From there on they are in accordance with the books? A Yes.

Q Since then the books have been kept under your supervision? A They have.

Q Do these various statements accurately and correctly portray the financial condition of the company as of the respective dates for which they were prepared, as the same appears upon the books and records of the company? A In my opinion they accurately state the true conditions.

Q Have you gathered these various statements prepared on the four dates mentioned on another sheet where they are all grouped together? A Yes, I have one sheet which shows the four of them in comparative form, a separate balance sheet for each of the four dates, that is November 15, 1909; October 10, 1910; before the second mortgage bonds were issued, December 15, 1915, and December 31, 1915.

Mr. Faulks. Now I offer those five sheets, being the separate comparative statements of the financial condition of the Metropolitan Steamship Company of New Jersey at November 15, 1909; October 10, 1910; December 15, 1915; and December 31, 1916; as well as the sheet on which the figures for the four dates are grouped, in evidence as one exhibit, and ask that it be marked.

J. S. Morris Goodloe, further cross.

Q (*By Mr. English.*) Are the books on which those statements are based here? A They are, sir.

Q (*By Mr. English.*) You call this a comparative statement compared with what? A One date compared with another.

Q (*By Mr. English.*) Then you jumped five years, from 1910 to 1915; is that right?

The Court. That is apparent, Mr. English.

Q (*By Mr. English.*) Now where did you get your figures for cost of property from? A The cost of property is based on the securities issued to acquire that property.

Q (*By Mr. English.*) In other words, you took the capitalization of the company as represented by the stock issue and the bond and note indebtedness, is that it? A That is it; the books state that.

Q (*By Mr. English.*) That is the source of the entire cost of property? A It is; the initial column will show just how the initial cost of property was arrived at, the column headed November 15, 1909; there is only one item other than property on the assets side.

Q That is the thousand dollars cash? A Thousand dollars cash, which was created by the sale of capital stock to that extent.

Further cross examination by Mr. English.

Q Well now, between your statement dated November, 1909, and your statement dated October, 1910, the freight boats and Union Wharf were disposed of, were they not? A They were.

Q How was that credited? A That was credited to cost of property.

Q How much? A $1,500,000.

Q Where did you get that figure from? A That was the face value of the securities which were retired by the proceeds of the property sold.

Q Aren't you mistaken about that? A Not according to the books.

Q What securities for $1,500,000 were sold and credited against the Union Wharf and the freight boats? A $1,000,000 of bonds, $500,000 liability mortgage on the Union Wharf, which appears in the first column next to the last item.

Q Well, that is where you get the $500,000 from on that mortgage. Where did the bonds come from that were retired, do you know? A I do not.

Q Do you know what their actual value was as opposed to their par value? A I do not.

Q Would not the amount of that credit somewhat depend on the actual value of the bond, opposed to the face value which you credited? A No, sir; the actual value of the bonds was charged to that account in the first place.

Q You are assuming that in November, 1915, those bonds were worth par and the notes worth par and the stock worth par?

The Court. He is not assuming anything. You know as well as I do how those accounts are made up. He is simply taking the face value of the securities, that is all, as they appear on the books of the company. Do not waste time on that.

Q If you credited on the sale of the freight boats and the wharf a million dollars of bonds, and the bonds were bought at something less than a million dollars ought there not to be a credit somewhere?

Mr. Faulks. I object to that.

The Court. I will let him answer the question.

A If the company had bought the bonds?

Q Yes, at less than a million dollars, which you put them in at, ought not there to have been a credit for the difference? A There would be a credit to cost of property.

Q Did you get any such credit? A There is no record of the bonds having been bought by the company at less than par.

Q Where did the company get it, according to the record. You went by the record? A The record shows that the bonds were retired by surrender of certain property.

Q Yes, and as far as the record goes the bonds went—the value of the surrender was the face value of the bonds? A It was.

Q If there was in fact a difference between the face value and actual value ought there not be a credit in there somewhere?

Mr. Faulks. I submit the witness already answered that. It does not appear the bonds were ever bought by the company.

Mr. English. We know what the history of the bonds were in this case.

The Court. Then why ask this witness.

Mr. English. To get to the accuracy of his account. I do not think this account is worth anything, in view of the facts as we know them, just a paper statement, and what is the use of putting in this record a thing that is not worth anything under the evidence now that is in the case.

The Court. I will let it be marked in order to save time, as an illustration of

what the witness would testify if he were asked with respect to each one of those items appearing on these accounts.

Q And whatever this paper shows is what you got out of the books? A Yes, sir.

Q And whether the books are fair or accurate or anything else you do not undertake to assume any responsibility? A We do not undertake any responsibility as to the property asset.

Q Or as to the truth or bona fides of the entries? A In some respects, yes.

Q In what respect? A Respect that the property account is charged with the par value or face value of the securities issued to acquire property.

Q That merely goes to the accuracy of the figures? A Yes.

Q I am going back of the figures. You did not undertake to go back of the figures? A I didn't know the value of the property.

Further direct examination by Mr. Faulks.

Q You have had a supervision of the books of the company now for about two years? A Yes.

Q Do these financial statements appearing on the books of the company, and from which you have compiled these sheets, fairly show the actual financial condition of the company as it exists today?

Mr. English. I object to that. He can only answer that out of the books.

The Court. Mr. Faulks, he may answer it if he wants to, but it will have absolutely no effect upon my mind, because it does not.

Mr. Faulks. He has already said, your Honor, that he could testify as to the accuracy of the condition shown by the books during a certain period, except as to cost of property.

The Court. As to cost of property, yes.

Mr. Faulks. I do not expect him to say what the Yale and Harvard were worth, I exclude that, but whether they fairly show the financial condition of the company outside of that matter?

A They do.

Q And are you sufficiently familiar with the various items which appear on the company's books and with its records to enable you to make that statement? A I am.

Q Now tell us how this item of cost of property was gotten at; that is, how was it entered on the books at the inception of the company. Turn to that. A In the journal, the first entry.

Mr. English. Are you going to mark this paper in evidence?

Mr. Faulks. Yes, I offer that group of papers as one exhibit.

Marked Exhibit D. 34.

Mr. English. Your Honor understands the subject of our objection, about the same grounds as the others.

A The property account on the books is made up of two entries, the first under date of November nineteenth, charging property account by credit to reorganization managers $6,499,000. The second entry charges the reorganization managers by a credit to capital stock $2,999,000.

First mortgage bonds $3,000,000. Two year six per cent. notes $500,000. Making the effect of that entire property account debited $6,499,000. to capital stock, first mortgage bonds and two year notes. On the next page the first entry under same date is entry debiting property by credit to mortgage on Union Wharf $500,000. Total $6,999,000. as the initial entry.

Q Therefore Union Wharf, according to these entries, was taken in at a cost of $900,000. as against which there was a liability of $500,000. on account of the mortgage set up? A $900,000. being included in property account and not segregated.

Q And that is the reason that when you prepared this statement that the cost of property as between November 15, 1909, and October 10, 1910, was reduced from $6,999,000. to $5,486,000.? A Correct. There is one slight item in there of about twelve thousand dollars which does not appear on the face of it, but which is shown here.

Q Was that due to the exchange that was made of the Agwi notes, that is, notes being given for sixty thousand dollars in lieu of the ten year notes for a larger amount? A Lieu of ten year notes for about seventy-two thousand and some hundred.

Q Do you know by whom these entries to which you have just been referring in the journal were made? A I do not.

Q They relate to a period of time which had to do with the incorporation and organization of the company back in November, 1909? A Yes, sir.

RECESS.

J. S. Morris Goodloe, further direct.

Q Mr. Goodloe, there is one further statement which I desire to show you, being statement entitled, "Metropolitan Steamship Company of New Jersey statement of net liabilities, except capital stock representing investment in steamships." Has that been prepared from the books and records of the company? A It has.

Q And does it show the figures as of the same four dates that you testified with reference to in connection with the balance sheets, namely, November 15, 1909, October 10, 1910, before issue of second mortgage bonds, December 15, 1915, and December 31, 1916? A Yes, sir.

Q Does this statement show the liabilities of the company other than its capital stock on each of those dates? A Yes.

Q And does it also show the assets of the company other than those which were included in property account as you explained this morning? A Yes, sir.

Mr. Faulks. I offer that in evidence.

Marked Exhibit D. 35.

Mr. English. We make the same objection.

The Court. That will be admitted in the same way I admitted all these statements, being what the witness would testify if he were interrogated in respect to each of the items.

Mr. English. In other words, your Honor takes these to be a sort of photograph of the books?

The Court. Yes, subject to your inspection at any time.

Q And does this show that the liabilities of the company other than capital stock as of De-

cember 31, 1916, amounted to $3,233,555.77? A Yes, sir.

Q As against what figure on October 10, 1910, before the issue of second mortgage bonds was made? A $4,102,274.85.

Q And as against what figure at the time the company was organized? A $5,499,000.

Q And is there any change in the property account reflected in this statement other than the disposition of the freight boats, the equity in the Union Wharf, or the freight boats, the Union Wharf and the lease of the India Wharf? A Yes: the second column indicates what the financial condition had been on November 15, 1909, if those items were eliminated as of that date instead of at the date at which the property was actually sold, which was, I believe, about March, 1910, so that to make a comparison as of November 15, 1909, with October, 1910, on the same property basis, the basis of the same property owned.

Q So that the property account that you have testified to before is not shown in this statement as of any date? A No, sir, the property account is excluded.

Q Now, from an analysis of that statement can you tell us what the receipts of the company have been since opening business on October 10, 1910, down to December 31, 1916, and what disposition has been made of those receipts?

Mr. English. What statement is he asked to refer to?

Mr. Faulks. The one I have just offered in evidence.

Mr. English. I object to that for two reasons, one because the statement speaks

for itself, and your Honor admitted it as showing what the books show; and the other, I do not see any basis in this statement for any such question.

The Court. That is what I was wondering, does the statement show it?

Q Let me withdraw that question. From the statements which have been put in evidence and from your examination of the books and records of the company can you now give us the figures there appearing showing what the receipts of the company have been since the opening of business on October 10, 1910, down to the close of December, on December 31, 1916, and what disposition has been made of those receipts?

Mr. English. I object to that because we can read the statement just as well as the witness.

The Court. He may answer it yes or no.

A Yes, I can.

Q (*By the Court.*) Does it appear from these statements? A It is drawn from these statements by the comparison particularly of the statement, the comparative statement of assets and liabilities, the four periods.

Q (*By the Court.*) D. 34? A That is showing the financial condition in November, 1909, and October, 1910, and December, 1915, and December, 1916.

Q (*By the Court.*) How do you arrive at it? A The comparison of the profit and loss account shows that there was—

Mr. English. The Court asks you to give the figures. I thought you wanted the basis from which he reaches the conclusion.

The Court. That is what my question was. You may call off these figures; let me understand exactly how you get it.

Q (*By Mr. English.*) What paper are you referring to now? A I am referring to the comparative statement of financial conditions.

Q (*By Mr. English.*) D. 34, all right.

The Court. D. 34.

A From which it appears that there was a net increase in profit and loss account of $1,793,719. That is arrived at by the credit balance in profit and loss December, 1916, $677,-736, compared with the debit balance of October 10, 1910, of $115,983; the net increase is equivalent to the amount shown on the recapitulation of income in the last column of $751,875.

Q (*By the Court.*) Where is that last figure? A That seven hundred and fifty-one thounsand is equivalent to the increase of this figure over that; that is merely a mathematical calculation.

Q (*By the Court.*) The $751,000 that you refer to is Exhibit D. 33, the last column of D. 33? A That was the first item of the resources; the second item is proceeds from the sale of second mortgage bonds, $750,000; that is shown on the comparative statement; the third item is the proceeds from the sale of India Wharf property, $75,000, which is also shown on the comparative statement as a decrease in cost of propery account; the property value at December, 1916, was $5,411,000, and October 10, $5,486,000; that makes a total of resources under those three captions of $1,618,719.08; those resources have been disposed of in the following way.

Q (*By Mr. English.*) Pardon me, just a minute. During what term of years are those

resources? A That is from October 10, 1910, to December 31, 1916. The resources cited have been applied first to the payment of liabilities, first mortgage bonds, $422,000. Each of these figures may be verified by comparison with this comparative statement.

Q (*By Mr. English.*) $422,000 face value? A Face value, yes; second mortgage bonds retired, being the difference between the $750,000 original issue and the amount outstanding at December 31, 1916, of $286,000, a net decrease of $464,000 by the payment of two years six per cent. notes of $500,000, by the payment of demand notes to the Assets Realization Company of $95,506.19, making total liabilities paid during that period of $1,481,506.19.

Q (*By Mr. English.*) You are giving face values now, aren't you? A Yes. There is expended for additions and improvements to property and equipment, furniture, that is moveable equipment on board the ships, $22,008.33, office furniture $150, making a total of $1,503,-664.52 against total resources of $1,618,719.08; the difference is $115,054.56, which is represented by the net increase in net current assets at December 31, 1916, as compared with October 10, 1910. I have simply for conventience made a memorandum as to what the increase in these net current assets is composed of, I have made that in memorandum form for comparison.

Q I think you better put it in; it isn't long, is it? A No.

Mr. English. Put what in?

The Court. What the increase in net current assets now represents.

A Increase in cash of $41,560.52, that is an increase that you will see from the balance sheet

of October 10, cash was eleven thousand and some odd and 1916 $52,600; these are net increases or decrease. There was an increase in the accounts receivable of $114,461.69, an increase in prepaid insurance of $12,993.11, a decrease in prepaid expenses of an item that was on the October, 1910, balance sheet, which has since been eliminated of $4,814.63; the total increase in current assets was $164,200.69, but there was a corresponding increase in some of the liabilities which will reduce it to the net figure previously stated. The current liabilities that were increased were accounts payable, $14,166.45; there was a note due in January, 1917, which was on the December, 1916, balance sheet and not on the previous account, $30,000; traffic liabilities increased, $19,549.72; prepaid rentals increased $30,000; that means the Pacific Alaska Navigation Company had paid its rent in advance, had paid its rent in advance for the month of January, 1917, therefore it was liability of the steamship company at the end of December. Accrued taxes increased $812.88; on the other side accrued interest had decreased by $45,382.92, making a total increase in current liabilities of $49,146.13, which as compared with the increase of current assets of $164,200.69 produces the net increase in the net current assets of $115,054.56. On that basis if all of their assets other than property, etc., were reduced to cash basis they would have $115,000 more cash.

Cross examination by Mr. English.

Q When did you make up these various tabulations which you have produced here? A Within the last few weeks.

Q Who did you confer with about it ? A With Mr. Faulks, Mr. Chase and Mr. Nicholson.

Q Anybody else? A No, sir.

Q Do you know Mr. Edward D. Robbins? A Yes, sir.

Q When did you meet him in connection with the matter? A With which matter?

Q This matter. A I have met him—in the present case—I first met him sometime last spring.

Q And in what connection was that? A That was in connection with making up statements of meeting of the stockholders.

Q Did you go over the books with him at time? A No, sir.

Q Now, as I understand it, the figures which you set up on these various statements you have taken from the books available as supplemented by statements of outside parties like these trustees, the American Trust Company, and things like that? A Various books and records.

Q Have you been aided by what anybody else told you? A No, sir.

Q Or explanations that have been given to you as to what the entries meant, or something like that? A To some extent in that respect.

Q Who aided you with explanations of that kind? A Principally Mr. Nicholson.

Q Mr. Chase have a hand in that? A Not much; some of the clerks in his office, that is, asking just what an item might mean abbreviated on a check stub.

Q Anybody else participate in that kind of information? A No, except I may add there, yes, some of the accounts of the Pacific Navigation Company I was aided by officers and employes of that company.

Q You undertook a moment ago to set forth a comparative statement showing an increase of re-

sources and you included in that second mortgage bonds, proceeds of second mortgage bonds? A Yes, sir.

Q Do you think that is an increase of resources? A The bonds were disposed of and became a liability on or about October 10, 1910.

Q Well, would you say a concern which had mortgaged its property to get money had increased its resources? A Yes.

Q You would? A If you increase your liabilities by borrowing money.

The Court. From a bookkeeping standpoint you know that is a fact, increase of resources is also an increase of liabilities.

Q Did you balance it off on the other side? A Yes; that represents the liability; in the first place, the creation of the liability creates the resource.

Q So that is about as broad as it is long, isn't it? A If you issue a note for $100 and get $100 in money paid you have got resource of $100.

Q But you have got liability, too, haven't you? A Yes.

The Court. That is enough of that.

Q Now, there is nothing shown on here which is not in the books or in the records at various times, and all these papers are worth on the last analysis are what the books are worth, aren't they? A Yes.

Q If those books have been, have been inaccurately kept necessarily this statement while true to the books is not true to the fact. A The books were inaccurately kept in the first place, but were corrected to state the facts.

Q So far as you were able to? A So far as we had information.

Q But if you did not have the accurate information to make the accurate correction then this paper is necessarily inaccurate, isn't it? A There is an if in there.

Q I know it is; I want you to answer with the if? A To what extent would you mean the books were inaccurate if they were inaccurate?

Q You know more about these books than I do? A Yes.

Q I want to know whether your statement rises any higher than its source, which is these books? A No, sir.

The Court. He has answered that.

Q I want him to answer again. That is a fact, isn't it? He seems rather loath to answer. A Yes, the books were written up and necessary entries made.

Q If the books in their original state of inaccuracy or in their revised state of attempted accuracy are in the last analysis wrong, then your statement in the last analysis is wrong? A Yes.

Q How much money do the books show was in the possession of the company, I mean the steamship company, on March 5, 1910? A Why, my memory is not good enough to answer that.

Q Well, get the books, they are right here. A You mean cash?

Q Take any book you want to answer that question. I am dealing with cash, yes. March 5 and 6, I will enlarge the question to include March 6th as well as March 5th, 1910? A According to the cash book there was a balance of $688.37.

Q How much? A $688.37.

Q That was cash? A That was cash.

Q What date? A March 4 and 5; there is no entry on here between March 1st and 14th.

Q What was the total amount of money which was handled in cash by the company up to March 14th? A I am not able to say without tabulating the results over again.

Q Well, what books do you have to go to to get that result? A We have to dig back through the analysis of the cash that was entered after that date on not only the cash book but the journal, because there was considerable amount handled through the New York agency.

Q That all appears on the books, you say, what was handled through the New York agency? A Sooner or later.

Q What do you say? A Sooner or later, but not always under those dates, in fact on those dates it was quite irregular as to the entries, the periods.

Q The cash book which you referred to when you answered the question a moment ago on page 3 only contains a few entries? A At that time a large proportion of the accounts, in fact, all of the accounts were handled through the New York agency, their receipts and disbursements.

Q Just answer my question again then, how much money they had on hand on March 5th or 6th? A The general cash account showed, I think, $6,886; whether there was any on hand at the New York agency at that date I don't know.

Q Don't the books show somewhere how much total cash they had on hand? A Not at every day, no, sir.

Q Well, are you able to look through these books, whatever may be necessary, and tell us

how much on March 5th or 6th, or both dates, the company had on hand in cash? A I can if I am given time, but not in a short moment.

Q All right, I wish you would do it.

The Court. No, I object to that; he may do it or prepare himself sometime during the week.

Q After you go off the stand and before you leave tonight will you please do that? A No, sir, I can't do it in that time.

Q Between now and next Monday morning will you do it? A I can't say definitely; I have an engagement for tomorrow, likewise most of Sunday. If you will give me more time, I will undertake to do it.

Q Counsel says he is going to put on a witness between now and Wednesday morning, will you do it by then.

Mr. Faulks. Your Honor please, I don't think the witness ought to be expected to devote a whole lot of time to the preparation of these figures for counsel; it is apparent from what he says that it will be a matter of a good deal of labor; I don't think we are under any obligation to do that.

The Court. I shall not require him to unless you consent to it or unless he consents to it.

Mr. Faulks. I should like to talk to him as to the amount of time it will require before we undertake to consent to it.

Q Is your loathness to dig into this due to the fact that it is so difficult to find the things in these books? A No, sir, it is due to the fact that I have been working about fifteen hours a day for the last month or six weeks and have

just gotten out to come over here after being laid up for a week.

Q You are as bad off as the lawyers in this case, aren't you? A Pretty nearly. This is the time of year when we are pretty busy.

Q Is there anything in the books to your recollection which shows whether the company had on March 5th or 6th any considerable sum in excess of the $688 which the cash book showed and which you have testified to? A I haven't any recollection as to that.

The Court. He says, Mr. English, that he has no recollection; now, that ends it; he simply hasn't.

Q This company in March, 1910, had outstanding demand notes, did it not? A Yes.

Q To what amount? A I think at the close of business on March 4th or 5th, I think it was March 5th, there was about ninety-five thousand and some odd hundred; just before that there was about $277,000, I think. Those are not exact figures, but approximate.

Q What became of the difference between the $277,000 and the $95,000? A Paid.

Q Do you know when they were paid? A The record shows, if I may refresh my recollection from the journal, there is an entry there that covers that specifically; it shows that there was $217,000 of demand notes at that time.

Q What time now? A March 5, 1910, at the beginning of business, of which $121,666.95 has this day been paid. This is the journal under date of March 5th.

Q Does it show how they were paid? A It shows it was paid through the New York agency.

Q Well, what does that mean? A Paid at the New York agency from the funds in its hands at that time, paid that note.

Q Did you see the check that paid it? A I did not.

Q All you know about that is what you deduce from that language there in the journal? A Yes.

Q Do you know who got the money that paid off those notes? A I do not.

Q Is there anything in the books to show? A The books show the Assets Realization Company.

Q Do you know what was done with those notes after they were thus paid? A I do not.

Q Do you know what became of the balance of those notes? A The $95,000 balance?

Q Yes. A That was paid on or about October, sometime during October, 1910.

Q And how was it paid? A Paid by cash.

Q And do you know where the cash came from? A I think I can tell that. The cash came from the City Bank of Hartford.

Q That $95,000 came from the City Bank of Hartford? A Yes, $99,506.19, together with interest amounting to $438.

Q And that is all you know about it ? A Payment was made by the check on the City Bank of Hartford of $98,944.

Q That is all you know about that matter? A Yes, sir.

Q Do the books show where the bonds were acquired from which went to secure the release of the freight boats and Union Wharf? A I think they do.

Q And where were they acquired from as the books show? A Edward T. Canfield.

Q What did he do? A It shows that they received $350,000 from Edward T. Canfield.

Q $350,000 of bonds, par value? A It shows that Edward T. Canfield was charged with $350,000 in one instance.

Q That is bonds, isn't it? A It doesn't say bonds, for Union Wharf property at Boston, sold this day to Edward T. Canfield, as per agreement, subject to mortgage of $500,000.

Q Does it show what Edward T. Canfield paid for that wharf property? A It shows that he is charged with that $350,000 and he is credited with an equal amount in first mortgage bonds.

Q (*By Mr. Faulks.*) Under what dates are those entries? A March 3, 1910.

Q Now, do you know from the books where any part of those $350,000 bonds came from? A Not other than that entry.

Q You don't know anything about that? A Not only what the books show.

Q Now, do the books show whose funds it was that purchased those bonds?

The Court. Mr. English, it is so perfectly clear as to just whose funds it was where that money came from you are simply wasting time.

Mr. English. This gentleman produced a statement which he says takes it source from the books.

The Court. Those books would not necessarily show that thing.

Mr. English. I want to show while he may be perfectly correct in his figures, the books are of no value at all in the case, that is what I have got in mind. If your Honor

is prepared to say that as a matter of fact, there is no use of my wasting time to prove it.

The Court. No, but I am prepared to say this, that it would not be natural for an entry to be in those books that would show the ultimate source of that money, it is not expected to be there. He has said distinctly that he can not say now that they do. Apparently if it does appear in any books it is in the New York agency books which are not here.

Q Do the books show how the second mortgage bonds were paid off? A Yes, sir, paid by checks of the trustee, Mr. Greening.

Q Well, Mr. Greening's checks did not pay off all those bonds, did they? A Yes, so far as I know; I think that is clearly demonstrated from the books.

Q Some of those bonds are still outstanding, aren't they? A Yes.

Q $286,000? A Yes.

Q Now, what do the books show the source of the payments of the balance? A It shows that they were redeemed by cash paid out by Mr. Greening, the trustee, on April 25, 1914, $50,000; on May 23, 1914, $275,000; on October 26, 1914, $54,000; that makes the total of $379,000; and then further payment of $85,000 on May, 1916.

Q Now, does it appear whether or not the two year notes of the company were exchanged for those bonds, does that appear on the books? A The books show that $750,000 of second mortgage bonds were sold October 11, 1910, to L. J. Dolan.

Q What did Mr. Dolan pay for them? A Paid $750,000.

Q Was that a cash transaction on his part? A They started a ledger account in his name; that account was cleared by charge to cash $250,000, by two year six per cent. notes surrendered in part settlement, $475,000, by interest accrued to date from those bonds $25,880.

Q That left $25,000 in notes, two year notes outstanding, what became of them? A Those were paid later, that was paid by cash June, 1914.

Q So the man that held those notes got cash for them? A Apparently.

Q Cash from the sinking fund? A No, from the general fund of the company.

Q Who disbursed it? A D. E. Case, trustee.

Q What is the date of that payment? A June, 1914, corrected here, it is entered under date of June; payment was made May 23, 1913.

Q Does it show who got the money for those notes? A No, sir, in accordance with the resolution of the directors.

Q Now, on March 4th there were outstanding $375,000 demand notes, were there not? A I don't recall the exact amount of them; there were some demand notes to the $217,000 I have just shown you the entry for.

Q You have told us about that. Where is the balance of that? A I don't know, sir.

The Court. He has answered that.

A The books don't show, not of that date.

Q If there were others outstanding beside that $217,000 you except from the books you don't know what became of them? A No.

Q And if they were paid off you don't know from the books? A No.

Q This resume you prepared, this statement, which is D. 34, shows considerable increase of accounts receivable, does that represent money which was owing to the Metropolitan Company?

10 A You say accounts receivable?

Q That is what is written on here? A At what date?

Q Well, accounts receivable on December 31, 1916, according to this paper is $132,524.92? A Yes.

Q What is that composed of? A Principally of balance due from the Pacific Navigation Company on their operating contract.

Q That represents money which the Pacific

20 Navigation Company still owes the Metropolitan, don't it? A Yes, for operations under their operating agreement.

Q In other words, they are that much overdue on their payments?

The Court. That is apparent, Mr. English.

Mr. English. It is not apparent.

The Court. His answer is apparent.

30

A $130,000 to balance sundry accounts.

Q Now, when was it you went down to look up the status of the Pacific Navigation Company, last June? A Last June, I was there through June and July.

Q Did you find that a proper entry on their books showing they owed that money? A Not as much as that, because this is balance December, 1916, that was six months before that; there

40 were two months' operations after June.

Q What was the status of the thing when you were out there in June? A Their books showed a liability of approximately the same amount.

Q It had not varied very much, then? A I don't mean that their books showed $130,000; I mean that their books showed practically the same July 1st that the Metropolitan Steamship Company's accounts show.

Q Now, from your examination, I understood you to say you made a very thorough examination of the books of the Pacific Navigation Company? A As far as earnings and expenses.

Q Did they have other sources of income beside the operation of the Harvard and Yale? A Some.

Q What is that? A Somewhat.

Q What expenses compared with the operations of the Harvard and Yale? A Comparatively small.

Q Comparatively small? Anything worth mentioning at all? A Yes, had income from some investment.

Q Anything else? A Interest on their balances.

Q The investments were the bonds of the Pacific Company for obligations of the stock of the Pacific Company? A I decline to answer without the advice of counsel or instructions from the Court on the ground that that was confidential information.

Mr. Ward. As counsel for the navigation company I will authorize you to answer that question.

Q (Question read.) A Some of it?

Q Most of it? A No, not all of it.

Q How much of it was stock of the Pacific Company? A Without papers in the matter I would not undertake to say what proportion.

Q Well, have you got any memoranda, did you bring home with you any memoranda as a result of this thorough examination of the books? A Yes, a good deal of it.

Q Where is it? A It is in my office.

Q You did not bring that over? A No.

Q You can get that, I suppose, without taking off much time? A Yes.

Q Will you get it? A If so instructed.

Q And when you get it that will enable you to say what proportion of the investment of the navigation company's funds was in this stock? A Yes.

Q Was it preferred stock or common stock when you looked at it?

The Court. Mr. English, what in the world is the use of going into that with this witness? We have had all that once or twice.

Q Well, maybe we have. Can you tell me whether the Pacific Navigation Company paid any dividend? A No, sir, I can not.

Q I thought you made a thorough examination of their books? A I did not go into their affairs prior to the time of their operating contract with the Metropolitan.

Q During the life of the operating contract did they pay any dividends? A That operating contract was from December 15, 1915, up to the end of August, 1916.

Q You and I are not talking about the same paper. I am talking about the paper that went into effect December, 1910. A That is what I considered as a rental contract.

Q I will use your language then, rental contract—did they pay any dividends during the life of the rental contract? A I did not go into that part of their account.

Q Why not? A Because I was not concerned in it, not interested.

Q Were you told not to go into that? A No.

The Court. It don't make any difference why he didn't; he didn't.

Q So you haven't any knowledge at all whether the Pacific Navigation Company paid any dividends during the years 1910 to 1915? A I have not.

Examined by Mr. Ward.

Q When you said that the Pacific Navigation Company owed this money to the Metropolitan under the operating contract you meant under the arrangement in force since December, 1915, did you not? A Yes.

Q Do you know whether those accounts have been adjusted yet? A They have not; they are in process of adjustment.

Further cross examination by Mr. English.

Q Do you know to whom the $132,000 due from the Pacific Navigation Company is payable to? A Payable to the Metropolitan Steamship Company. It is not $132,000, it is $130,000.

Q All right, $130,000, that is what they now owe? A At the 31st of December.

Q Is it payable to any trustees or direct to the Metropolitan Company? A Payable as I understand it to the Metropolitan Steamship Company.

Q And you are not acquainted with the so-called sinking fund agreement between the Pa-

cific Navigation Company and Metropolitan Company—

Mr. Faulks. It appears the terms of that agreement expired—

Mr. English. Strike out the question.

JOHN A. NORRIS sworn.

Direct examination by Mr. Faulks.

Q Mr. Norris, where do you live? A I live in Bath, Maine.

Q Are you a deputy sheriff or have you been a deputy sheriff up there? A I am deputy sheriff now, sir.

Q Do you know Jennie R. Morse? A I do by sight.

Q Where does she live? A She lives on Washington street, Bath, Maine.

Q And how long have you known her by sight? A Forty years or more.

Q Did you serve any paper on her last June? A I did, sir.

Q Have you it with you? A Yes, sir.

Q Please produce it. Where did you effect service at that time of this paper? A On what we call Winter street, met her on the street served it in hand.

Q It appears by an affidavit or acknowledgment on this notice that the date of service was June 8, 1916; do you know whether that is correct or not? A That is correct.

Q And you served this paper on her at that time? A I did, sir.

Mr. Faulks. I offer it in evidence. It is the notice of the special stockholders' meeting of the Metropolitan Steamship Company called for June 12, 1916.

Mr. English. We never denied that that notice was served.

Marked Exhibit D. 36.

Cross examination by Mr. English.

Q Who asked you to serve that paper, Mr. Sheriff? A Mr. William T. Hall.

Q William T. Hall? A Yes.

Q Who is he? A Lawyer in Bath, Maine.

Q Did he tell you where Miss Morse lived? A I knew where Miss Morse lived.

Q That may be, but did he tell you? A Yes, he told me.

Q He knew, too? A He knew, too.

Q And he told you to serve it on her personally? A He did.

Q Were you sheriff in those days? A I was.

JOHN J. QUIGLEY sworn.

Direct examination by Mr. Faulks.

Q Where do you live, Mr. Quigley? A Boston.

Q Massachusetts? A Boston, Massachusetts.

Q Did you serve a notice similar to this Exhibit D. 36 on anyone last June? A Yes, sir, on William Mossman.

Q At what place and on what day? A At 85 Water street, in his office.

Q His office was in Boston? A Boston.

Q And at whose direction did you make this service? A Mr. Read.

Q Is Mr. Read in court? A Mr. Read is here, yes.

Q Can you give us the date on which you effected the service? A No, I think it was the 8th of June.

Walter A. Read, direct.

Q And did you make personal service of the notice? A I did.

Cross examination by Mr. English.

Q You don't mean Colonel Read, sitting right behind me? A No, sir.

Q Who is Mr. Read? A Mr. Read is in the rear there.

Mr. Faulks. I am going to call Mr. Read next.

Q Is he a lawyer? A No, sir.

Q How did he come to ask you to serve this, do you know?

The Court. I exclude that.

Q All you know is what Mr. Read asked you to do? A Yes.

Q Who Mr. Read is you don't know? A Well, in that case Mr. Read is my employer.

Q What is his business? A He is in charge of an agency in Boston.

Q What kind of an agency? A Collecting agency.

WALTER A. READ sworn.

Direct examination by Mr. Faulks.

Q Mr. Read, you live in Boston also? A I do.

Q And lived there last June? A I did.

Q Were you employed by someone at that time to serve a notice, this notice Exhibit D. 36 for a special meeting of the stockholders of the Metropolitan Steamship Company to be held on June 12th? A I was.

Q Upon whom were you asked to effect service of that notice? A Upon William J. Covill.

Walter A. Read, cross.

Q Anyone else? A And also on Mr. William Mossman.

Q Mr. Quigley, the last witness, was in your employ at that time? A He was.

Q And you arranged with him to serve Mr. Mossman? A I did.

Q Did you serve Mr. Covill yourself? A I did, personally.

Q On what day? A I think it was on June the 8th.

Q I show you an affidavit purporting to be made by you under date of June 7th; does that refresh your recollection as to the date upon which you effected service? A I effected service on the 8th day of June, 1916.

Q That affidavit purports to be made on the 8th, and that is the date on which you effected service? A Yes, sir.

Q Did you serve this notice personally? A I did.

Cross examination by Mr. English.

Q Who asked you to serve these papers? A The firm of Beales & Nicholson.

Q And what are they? A I understand they are a firm of attorneys in New York City.

Q Do you know either of them personally? A I became acquainted with one of them today.

Q Mr. Nicholson sitting right here? A Yes.

Q What were your instructions? A I could read them to you from the letter I have with me, the original letter, if you wish.

Q Well, that will do.

The Court. What difference does it make what his instructions were? It shows they were served by Warren D. Chase, or at Chase's direction; of course, there is no

question about that, and Chase says he acted for Robbins; what more do you want than that.

Mr. English. I don't know.

Mr. Faulks. I don't understand Mr. Chase says he was acting for Robbins at the time this meeting was held.

The Court. Unless he will go on the stand and deny it I will assume he was.

Mr. Faulks. My recollection of his present testimony is that he said he represented Mr. Robbins in connection with the transactions that led up to March 5th; after that he represented himself and stock that he owned in the company, acquired at that time.

The Court. That is not my recollection of the testimony. My recollection of the testimony is that he stated he represented Robbins' interest right to today, representing at the same time his own interest as a stockholder in the company. I may be mistaken, the record will show.

I see by looking at the record that you are right, Mr. Faulks.

JOHN J. QUIGLEY, recalled.

Direct examination by Mr. Faulks.

Q I show you an affidavit purporting to have been made by you on the 7th of June, 1916, and ask you whether that enables you to refresh your recollection as to the dates on which you served this notice on Mr. Mossman? A Yes, sir, it does, it was on the 7th.

Q And on what date did you serve it? A On the 7th.

Q Of June, 1916? A Yes.

J. TURNER GRIEVE sworn.

Direct examination by Mr. Faulks.

Q Mr. Grieve, are you employed in Mr. Nicholson's office by Mr. Nicholson? A I am.

Q And were you so employed in June, 1916? A I was.

Q Did you at that time at Mr. Nicholson's direction effect service of this notice of stockholders' meeting, Exhibit D. 36, upon any person or persons? A I did.

Q Upon whom? A On Edward D. Wire and William C. Watt.

Q Did you serve them each personally? A I did.

Q And at what place did you serve them? A I served Mr. Edward D. Wire at 74 Passaic Street, Newark, New Jersey, and Mr. William C. Watt at 340 West Fourth Street, Manhattan, New York City.

Q And what was the date of service in each case? A In the case of Mr. Edward D. Wire it was June 7, 1916, and Mr. Watt on June 8, 1916.

Cross examination by Mr. English.

Q Where was it Mr. Wire lived? A I don't know.

Q Where did you serve him? A Mr. Wire, 74 Passaic Street, Newark.

Q What is that, a business place? A Yes.

Q What kind of a business? A I don't recall just now.

Q Some ship business? A No, I don't think so, no, it was not.

Q Was it Wire's own business? A No, I think he was general manager of some office there, it is a corporation.

Q Who asked you to serve these papers? A Mr. Nicholson.

Q You are in his office? A I am.

Q You were at one time an officer of the Metropolitan Steamship Company, weren't you? A Yes, sir.

Q Were you a stockholder? A Yes, sir.

Q How many shares?

Mr. Faulks. I object to this as not being cross examination.

The Court. I will sustain the objection as not cross examination.

Mr. English. Can I examine him on my own account?

The Court. No, I don't think so, Mr. English, because we have gone into it with so many other witnesses we know how many shares he had and we know how he got them.

Mr. English. May I just ask him one question, how much he paid for this stock?

The Court. No; I will assume he did not pay anything.

RODNEY T. MARTINSEN sworn.

Direct examination by Mr. Faulks.

Q Mr. Martinsen, are you one of the defendants in this case? A I am.

Q Were you formerly a director of the Metropolitan Steamship Company of New Jersey? A I was.

Q Are you such director at this time? A No.

Q When did you cease to be a director of that company? A I believe it was about June, 1914.

Q Have you been connected with the company at any time since then either as a director, officer, stockholder or in any other capacity? A No.

Q How did you come to become a director in this company? A At the request of Mr. Nicholson.

Q Mr. Douglas Nicholson who is here in court? A Yes.

Q How long had you known him at that time? A Since 1902.

Q In a business way or social way or both? A We occupied offices at one time in the same building on the same floor, that is how we became acquainted.

Q And your acquaintance and friendship with him has extended from that time until the present time? A It has.

Q (*By Mr. English.*) Are you a lawyer? A I am a lawyer.

Q Did he at one time request you to become a director in this company? A He did.

Q And did you agree to act in that capacity? A I did.

Q And you did so for a time with Mr. Hughes and Mr. Engelke as co-directors with you? A Yes.

Q During that time did you attend various meetings of boards of directors of the company? A I did.

Q And was Mr. Nicholson present at those meetings? A At most of them I believe he was.

Q Have you ever been employed by the New Haven Railroad Company or any of its subsidiary corporations? A No.

Q Ever done any legal work for any of them? A No.

Q Have you any interest in that company or any of its subsidiaries, stock interest or otherwise? A I have not.

Q Have you ever had any such interest? A No.

Q During your period of directorship in this company were you ever influenced by the New Haven Railroad Company or any of its subsidiaries to take any action or to refrain from taking any action? A I was not.

Q Were you ever consulted with reference to any action taken by the company by anyone other than Mr. Nicholson, and, if so, who? A By Mr. Chase, the only other person.

Q Anyone else? A Do you mean whether I have conferred with others?

Q Yes, with reference to any action taken by you as director of this company? A With the other directors of the company.

Q The other directors of the company? A Yes, those are the only persons.

Q You never had any stock in this company except such as was issued to you to qualify you as a director? A That was all.

Q And that was how many shares? A One share.

Q Did or did you not before voting for any measures or taking any actions as a director or officer of the company discuss the action proposed to be taken with Mr. Nicholson? A I did.

Q And were you or not guided by what he told you as to the proposed action in your vote? A I was.

Q Did you attend practically all the meetings of the directors of the company? A I did.

Q Why did you become a director in this company, Mr. Martinsen? A Simply at the request of Mr. Nicholson.

Q And as a favor to him? A Yes.

Q Did you do any other work for the company than attend meetings, did you do any routine work or draw any checks or render any other services at Mr. Nicholson's request? A Such as correspondence and attending to the payment of some bills and discussing questions relating to the company's affairs from time to time with whomever called to see me, and with Mr. Nicholson and others, with other officers and directors of the company and agents, etc., in other words, such routine work of the company as came to me by telephone or correspondence or personal call.

Q You did such work of that character from time to time? A Yes.

Q Mr. Martinsen, have you any reason to suppose that while you were acting as a director or officer of this company you were ever asked to take any action or to take any action in the interests of the New Haven Railroad Company or any of its affiliated companies? A Never.

Mr. English. I object to that, your Honor.

The Court. I will exclude it.

Q Did you while acting as a director or officer of this company ever take any action except what you believed to be in the best interests of the company and of all its stockholders?

Mr. English. I object to that.

The Court. I will let him answer.

Q I did not.

Cross examination by Mr. English.

Q When did you become a stockholder and director of this company? A I believe it was in the month of November, 1911.

Q Were you elected at the annual meeting that the stockholders held on that date? A I was elected at the meeting held, I believe it was around the 11th of November, the exact date I don't know.

Q Of what year? A 1911, if I am not mistaken.

Q That is the earliest date when you became a stockholder, as you remember? A So far as I can remember, yes.

Q What office did you have in the company besides being a director? A I was also secretary and treasurer of the company.

Q Were you paid for those services? A I was.

Q Fairly well paid for the amount of service performed? A I don't regard myself as being fairly well paid; I was paid.

Q Did you have much money to handle as treasurer? A Not a great deal.

Q Not a great deal? A No.

Q Most of the money the company had went to Mr. Greening, didn't it? A It was tied up by the trust agreement.

Q You know Mr. Greening? A I do, yes.

Q He was the fellow that handled most of the money then?

The Court. I exclude that question.

Q What moneys were there left for you to handle? A Very little.

Q Well, then, you were not worked very hard as treasurer then, were you? A Not with actual cash, no.

Q Now, what about those duties as secretary? A What about? What do you want to know about it?

Q I want to know how hard you worked as secretary? A I never overworked myself, I assure you of that.

Q Who wrote up the minutes, you or Mr. Nicholson? A I wrote them.

Q Dictated them to your stenographer? A Yes.

Q Before the meetings or afterwards? A After the meetings.

Q Always afterwards? A The resolutions were prepared before the meeting and after I prepared the minutes and dictated them.

Q Will you say the preparation of the resolutions did not include the minutes—

Mr. Faulks. I object to that question.

The Court. You may answer.

A There might have been an occasion when I knew just exactly what was going to transpire at the meeting and I prepared the minutes and read them off as I usually do.

Q In most cases you knew what was going to happen, didn't you? A I believe I knew every meeting what was going to happen, yes.

Q And who was it that helped to acquaint you with what was going to happen? A Mr. Nicholson.

Q And Mr. Chase? A No, not Mr. Chase.

Q You conferred with Mr. Chase about this company's matters, didn't you ? A I did not.

Rodney T. Martinsen, cross.

Q Did you know that Mr. Chase regarded himself as the owner of the company through stock ownership? A I didn't know anything of it, sir.

Q You didn't know of it? A No.

Q Mr. Nicholson never told you that? A Never told me anything about it.

Q Of course, you felt called upon to do about as Mr. Nicholson asked you to do, didn't you? A I chose to do so.

Q You chose to do so? A Yes.

Q Never saw fit to question anything he asked you to do? A I have questioned, have spoken to him about things that he asked me to do.

Q Would you go through with the idea? A I never thought I had any reason to question what Mr. Nicholson asked me to do.

Q Do you remember getting a check under date of December 9, 1912? A I do not.

Q For your services as secretary and treasurer for the year ending February 15, 1912? A That I remember.

Q Do you remember how much that was? A I don't remember how much it was.

Q I happen to have the stub check of the book on which the check was written that came from Mr. Greening? A All checks came from him.

Q $912.73? A If you say it is so, it is so.

Q The check stub says so? A I don't remember.

Q That is about your recollection?

The Court. That is the amount, I will assume that that is the amount.

Q And that was received for whatever services you performed in handling the few funds,

whatever they were, that came to you as treasurer, and for attending these directors and annual stockholders' meetings, is that right? A It was in payment of my services.

Q They were the services? A It was in payment of the services up to the time I have presented a statement.

Q I understand that perfectly,—and they were the services? A I don't know whether you have included all the services or not.

Q (*By the Court.*) Were they services as secretary and treasurer? A They were for my services as secretary and treasurer.

Q And your services as secretary and treasurer included what I suggested, handling the few funds that came to you and preparing the minutes of those various meetings? A Correspondence and things, yes.

Q Very elaborate correspondence? A Very.

Q How many years were you stockholder and director, do you know that? You said you went in on November, 1911? A Altogether about two and a half years.

Q That would bring you down to about when? A About June, 1914, if my recollection is correct.

Q Did you resign in the middle of the term, so to speak, of the annual meetings? A I did.

Q You did? A Yes, sir.

Q How did you come to do that? A By the request of Mr. Nicholson.

Q Do you know why he requested you to? A I do not.

Q What reason did he give you for asking for your resignation? A He said other arrangements had been made to have other directors, that is all.

Q I don't suppose you paid a dollar for stock, did you ? A I don't suppose I did either.

Q And who did you give the certificate back to after you had endorsed it in blank. A To Mr. Nicholson, from whom I received it.

Q Just as soon as you got it, I suppose, didn't you? A I suppose so, I don't remember.

Q You think you went in in 1911? A I said that is my recollection without looking at the minute book, I would say it was November, 1911.

Q Would you be be surprised to find you were a year wrong on that? A I might be.

Q You would be surprised? A I might be; the books will tell.

Q Without giving you too hard a shock let me show you the minute book of the stockholders, from which it appears at the meeting held November, 1910, you were present with one share, do you remember that, and you were on that occasion, as it appears on page sixty-eight of the minute book, elected a director. A That is a fact.

Q That is the fact? A I stated before without looking at the book I couldn't tell.

Q I just wondered how much of an impression your duties had made on your mind with reference to dates, that is all. Now, did Mr. Nicholson give any reason why they wanted to change the directors when you got out in 1913, or whenever it was? A No, he did not.

Q Did you inquire? A I did not.

Q Did he mention Mr. Chase's name in connection with the matter? A I believe he did.

Q Did he mention Mr. Robbins' name in connection with the matter? A He did not.

What did he say about Mr. Chase? A I don't remember, something about Mr. Chase hav-

ing arranged for some other directors, or something of that sort.

Q Now, are you sure you always prepared the minutes of the meetings, or were they handed to you already prepared? A I believe I prepared most of the minutes of the meetings.

Q Mr. Nicholson sometimes handed them to you? A I think there was a time when Mr. Nicholson prepared minutes; he may have prepared the minutes for a few of the meetings, I don't remember.

Q Can you remember whether that was early or later in your career as a director? A I believe it was the first two or three or four meetings, I don't remember.

Q You think those early meetings Mr. Nicholson handed you the minutes already prepared? A I say I believe he prepared the minutes.

Q Of the early meetings? A Yes.

Q And that was true of both stockholders and directors' meeting? A I say it might have been true.

Q And did he say that the minutes which he had prepared had been handed him by Mr. Chase? A No, I never heard Mr. Chase's name mentioned.

Q Now, do you remember attending a meeting of the directors shortly after your election, which meeting was held on November 29, 1910? A I do.

Q And do you remember what transpired at that meeting? A Not without consulting the minutes.

Q The minute book shows they resolved to have Mr. Lucius H. Stewart to go out to California to represent the company in settling up

the expense of the steamers Harvard and Yale? A Yes, sir.

Q Were you very familiar at that time with the voyage of the Harvard and Yale around the Pacific coast? A Nothing except what had been told me by Mr. Nicholson.

Q Did you know who Mr. Stewart was? A I knew he was claim agent of the Metropolitan.

Q Which company? A Metropolitan Steamship Company of New Jersey, the one I was secretary and treasurer of.

Q He was claim agent of your company? A That is my recollection, yes.

Q Did you employ him as claim agent? A He was employed by the company; I didn't employ him.

Q You were secretary and treasurer of the company? A He was already then employed.

Q He was already employed when you got in? A Yes.

Q Did you find out his previous career? A I know nothing about it.

Q Where he had been employed before that? A I knew nothing about it, I never met him, I didn't know him.

Q Did you know who it was that arranged that he should go to the Pacific coast? A I was so told by Mr. Nicholson.

Q And what were you told? A I was told he was to go there for the purpose of adjusting the financial relations resulting from the trip of those two steamers to the Pacific coast.

Q Were you told who had made the arrangements that your directors were asked to ratify? A Why, I would think, I think I was told that that arrangement had been made by the previous directors and officers of the company.

Q Well, who was named? A Mr. Nicholson and his co-directors.

Q And Mr. Chase, was he named? A I hadn't heard Mr. Chase's name mentioned.

The Court. Mr. English, is there any use of asking this witness questions along that line?

Mr. English. I don't know, sir, Of course, I am putting this in for your Honor. If your Honor is perfectly satisfied what I am trying to bring out—

The Court. I am perfectly satisfied it is not worth wasting any more time on this, that that board of directors was practically controlled by Chase for Chase.

Q Do you remember at the annual meeting of the stockholders which was held on November 18, 1910, and from which it appeared from the minutes you were present as a stockholder, they ratified the sale of the freight steamers of the company and the Union Wharf and the action of the directors in leasing the Harvard and Yale and other matters of that kind? A I remember that such a resolution was passed by the stockholders at that meeting.

Q And also authorizing a second mortgage bond issue? A Without looking at the minutes I do not remember that, but if it is in the minutes it was done.

Q What steps, if any, did you take to inform yourself as to the advisability of those various acts you were asked to vote on in ratification? A I didn't take any steps, I was not interested.

Q You voted on those because Mr. Nicholson asked you to? A At the stockholders' meeting.

Q And you cast your vote because Mr. Nicholson asked you to didn't you? A Yes.

THOMAS C. HUGHES sworn.

Direct examination by Mr. Faulks.

Q Mr. Hughes, you are one of the defendants in this case also, I think? A Yes, sir.

Q And were formerly a director in the Metropolitan Steamship Company of New Jersey? A Yes, sir.

Q Are you such a director at this time? A I am not.

Q Are you now connected with the company in any capacity as a director, officer, stockholder or otherwise? A No.

Q When did you cease to be a director of the company? A About June, 1914.

Q And since that time have you had any relations with the company at all? A No.

Q When were you elected a director? A I believe in November, 1910.

Q And at whose request, if anybody's, did you agree to become a director in this company? A Mr. Nicholson.

Q Mr. Douglas Nicholson? A Mr. Douglas Nicholson, yes.

Q Did you know him at that time? A Knew him for quite a number of years, yes.

Q In a social way, business way, or both? A Both.

Q And you knew him well, did you? A Very well.

Q (*By Mr. English.*) Are you a lawyer? A Yes.

Q (*By Mr. English.*) New York? A New York, yes.

Q Had you ever had offices connecting with Mr. Nicholson? A No, I did not.

Q You knew him both in a business way and as a friend? A Yes.

Q And were you ever requested by anyone other then Mr. Nicholson to become a member of this board of directors? A No.

Q And your acceptance of the office was due to the fact that he asked you to take it? A Yes.

Q Did you ever have any stock in the company except one share as a qualifying director? A That was all.

Q And that you endorsed in blank and returned to Mr. Nicholson? A I believe I did.

Q Now, during the time that you were a director of the company what service if any did you render? A Attended meetings, consulted with my fellow directors, examined resolutions, the general duties of a director.

Q Did you consult with Mr. Nicholson from time to time in regard to the matters that were brought to your attention for action? A I did.

Q To what extent were you governed by what he told you? A To the fullest extent.

Q Did he ever ask you to do anything which you regarded as improper? A No.

Q If he had would you have done it? A I would not.

Q Have you ever been interested in the New Haven Railroad Company or any of its allied companies in any way? A No.

Q Even been employed by it or them? A No.

Q Or any of them? A No.

Q You have not and never have been, I understand, a creditor of that company or the

holder of any of its securities? A No, I have never.

Q Or of any of its allied companies? A No, sir.

Q And in connection with all of your services as a director in this company were you guided by what you understood to be the best interests of the stockholders as they were disclosed to you by Mr. Nicholson.

Mr. English. I object to that.

The Court. He may answer it.

A I was.

The Court. Counsel realizes of course, that the testimony is not very important.

Cross examination by Mr. English.

Q You didn't know very much about this company, did you? A No, only what I was told.

Q You were not told very much, were you? A Not much, no.

Q I suppose you voted like anybody else in a similar situation, because Mr. Nicholson said, "Now, this is all right?" A Exactly; I had confidence in Mr. Nicholson.

Q Didn't appear anything criminal at all about it or anything like that, and you simply voted, that is right? A That is right.

Q You went in in November, 1910, when did you go out? A In June, 1914, if my memory serves me.

Q Why did you go out in June rather than at the next annual meeting? A If I remember right Mr. Nicholson requested me to go out.

Q Give any reason to you? A No, no reason at all.

Q Did you ask for any? A I did not.

Q Didn't you think it was kind of funny for Nicholson to come to you and say, "Now, get out." A No, I didn't think it was funny.

Q He said it politely, of course.

The Court. I will exclude that.

Q Did you ever meet Mr. Chase in connection with the affairs of this company? A I don't remember meeting him.

Q You know him, don't you? A I know him, I believe I do, yes.

Q You heard his name mentioned? A No, I don't think I did.

Q You got pretty well paid for what you did, didn't you? A I wouldn't go so far as to say that.

Q Well, you did get paid? A I got paid some money.

Q In December, 1912, you get 200? A Very likely, if that is the record there.

Q That says, "For services as president for the year ending December 12, 1912?" Did you get any more after that? A I may have.

Q It don't appear in this book, if it does I haven't found it. Whatever you did you did at the request of Mr. Nicholson? A Yes.

Q Of course, you didn't pay any money for your stock? A No.

ADOLPH L. ENGELKE sworn.

Direct examination by Mr. Faulks.

Q Mr. Engelke, you are also, I think, another of the individual defendants in this suit? A I am.

Q Where do you live? A Englewood, New Jersey.

Q Are you an attorney at law of the State of New Jersey? A I am.

Q And practice your profession I believe in Jersey City? A Right.

Q That is, your office is in Jersey City? A It is.

Q When were you admitted to the bar, please? A 1900, February term.

Q How long have you known Mr. Douglas Nicholson? A I think it is since 1902.

Q Have you had business relations with him since that time, legal business relations? A I have on numerous occasions.

Q Growing out of litigation and other legal matters? A Yes.

Q Did he at one time request you to become a director in the Metropolitan Steamship Company of New Jersey? A He did.

Q Did he say anything to you as to why he desired you to become a director? A I don't recall that he gave any particular reason.

Q You were a resident of New Jersey at that time? A Yes, I do recall now, that you mention it, probably that was the reason; I am not sure that he gave that as a reason, however.

Q Do you remember that you were elected as a director at the stockholders' meeting held in November, 1910? A Yes, sir.

Q And how long did you continue to serve in that capacity? A I believe it was in the month of October, 1915, that I ceased acting.

Q Did you continue then beyond the time when Mr. Martinsen and Mr. Hughes resigned? A I did.

Q Do you know why you continued longer? A I presume it was in order to qualify as a New Jersey director.

Q Did you hold any stock in the company other than one share to qualify you as a director? A None except that one share.

Q You agreed to become a director, as I understand, at Mr. Nicholson's request? A Solely.

Q And during the period of your holding that office whom did you meet in connection with the company's affairs in addition to your co-directors? A Mr. Nicholson.

Q Did you attend the various meetings of the directors of the company during that time? A I did; I think I attended every one.

Q Did you consult with Mr. Nicholson with reference to the resolutions to be adopted and the actions to be taken at those meetings? A I did.

Q And were you or not guided by this advice and information as to whether or not those actions were proper and in the interest of the company? A Yes.

Q Have you ever had any relations with the New Haven Railroad Company or any of its branches? A No, sir.

Q Never been a stockholder or director or creditor of that company? A No, sir.

Q Ever done any legal work for them? A No sir, against them.

Q In anything that you ever did as a director or officer of the Metropolitan Steamship Company did you ever seek or undertake to do anything in the interests of the New Haven Company or any of its subsidiaries? A No sir.

Adolph L. Engelke, cross.

Mr. English. I object to that.

The Court. I will admit the question.

Q Or to act other than what you believed to be in the best interests of the company of which you were director? A Always.

Q Have you given us the date of your resignation as you remember as director? A I can not give the exact date; I think it was sometime in October, 1915, but the date I can't mention, it might have been the latter part of the month.

Cross examination by Mr. English.

Q You are a lawyer, aren't you? A Yes.

Q I don't suppose you have got any particular qualifications as a ship man, have you?

Mr. Faulks. I object to that as immaterial.

A Unless a great many voyages at sea have given me that qualification.

Q Would you feel qualified to operate—

The Court. I exclude that line of questions; do not let us waste time over it.

Q You lasted from November, 1910, to December, 1914, in this company, is that what you say? A No, I didn't.

Q December, 1915? A No, sir, October, 1915.

Q Then why did you resign or get out? A I believe there was a new board of directors elected I think at a meeting the latter part of October.

Q The books show it was November; did you get out before the annual meeting? A Yes.

Q You were asked to resign? A Yes.

Q By Mr. Nicholson? A Yes, it was.

Q Did he give you any reason? A The reason I believe he gave, as I recall it now, I

may be mistaken, was that New Jersey no longer required New Jersey directors.

Q Well, you got paid for your services, or some of them? A I did.

Q Did you take up with Mr. Nicholson the question about the payments? A I did.

Q And he said he would take it up with Mr. Chase? A No sir, he did not.

Q Do you know you got paid as a result of a letter Mr. Chase wrote? A I do not.

Q Didn't know that? A No.

Q What did you get, do you remember? A I think I got $150 at one time.

Q In December, 1914, you got $250, didn't you? A If the records show so I might.

Q The record says, I read from C. 199, stub book of Adolph L. Engelke, "Prof. services for year ending December 1, 1914, per Chase's letter of 12-10-14." What professional services did you perform for that company? A Why, Mr. Nicholson frequently inquired regarding corporate action.

Q You steered him on New Jersey law, so to speak? A On a number of cases, yes.

Q Did he mention Mr. Chase in connection with the matter? A Never.

Mr. English. This morning when the minutes of the directors' meeting of June, 1916, were being read I called attention to the fact that it showed a written protest from Fernald & Company. Counsel have produced it for me now I think it ought to be put in evidence as a part of the minutes of that meeting.

Mr. Faulks. We will put it in. I would put it in when I examine Mr. Chase.

Paper signed "George A. Fernald & Co.," addressed to the officers, directors and stockholders of the Metropolitan Steamship Company marked 197 for identification.

Adjourned until Monday, January 15, 1919.

Continuation of proceedings pursuant to the adjournment last had, on the 15th day of January, 1917, at the place and in the presence of the parties and the Court as before.

Mr. Faulks. If your Honor please, I ask at this time to have marked for identification letter from G. W. Apsey, to the American Trust Company, dated February 23, 1910, with the three sheets attached to it, containing statements as to the result of the operations of the freight boats during the years 1906, 1907, 1908 and 1909, which were offered in evidence and excluded while Mr. Leighton was on the stand the other day, and I renew my request to have that letter and its accompanying statements admitted in evidence. It seems to me that in view of the evidence that went in over our objection through Mr. McKinnon that we are entitled to have this evidence in.

The Court. At what page was that that Mr. McKinnon testified?

Mr. Faulks. Page 40. Mr. McKinnon was being examined by Mr. English on direct for the complainants and was testifying as to the papers which were sent the American Trust Company in February, 1910, when the release of the freight boats was being arranged by Mr. McKinnon and his associates,

and was asked: "Do you remember what the papers were which were executed for the purpose of this transfer, what kind of papers, deeds or documents? A First a statement furnished the trustee showing the value of the property which we proposed to sell. Second, an accounting statement showing the result from the operation of the freight vessels for I think three or four or five preceding years; a resolution of the board that it was in the interest of the company that the boats should be sold at that price, and the deeds to the property."

The Court. I understand your point. The paper may now be marked for identification and I will reserve my consideration as to whether it should go in evidence until later.

Mr. English. There is nothing to show that this is the paper McKinnon was talking about.

The Court. Well, I do not know about that.

Mr. Faulks. The paper itself shows it.

Mr. English. I don't know whether it does or not.

Mr. Faulks. It is clearly the paper which McKinnon says was sent to the Trust company at that time, and that is borne out by the fact that Mr. Leighton says it was received from the Assets company at that time, and that Mr. Apsey, the writer of the letter, was their auditor.

The Court. Well, direct it to my attention before the close of the case.

Marked for identification D. 37.

DOUGLAS NICHOLSON, sworn.

Direct examination by Mr. Faulks.

Q Where do you live? A Mt. Vernon, New York.

Q What is your business or profession? A Lawyer.

Q Member of what bar? A New York bar.

Q How long have you been a member of that bar? A About fourteen or fifteen years.

Q Have you actively conducted the practice of your profession in New York during all of that time? A I have.

Q And where are your offices at present? A In the Metropolitan Tower, New York City.

Q No. 1 Madison avenue? A Yes.

Q Where were they before that? A At 203 Broadway, New York City.

Q Do you remember about the time you moved from Broadway to Madison avenue? A I think it was in December, 1910.

Q In March, 1910, you were then, as I understand, practicing, with your offices at 203 Broad way? A That is right.

Q At that time did you know Mr. Warren D. Chase? A Yes.

Q How long have you known him? A Oh, for a dozen years or more.

Q In what way? A Both in a business way and socially.

Q How did you come to be acquainted with him? A We first met in a legal matter in which he represented one side and I the other.

Q Now, did that business relationship grow? A Yes.

Q And out of the business relationship a friendship, as I understand? A That is right.

Q At any time in the early part of 1910 did you have any communication from Mr. Chase with reference to the Metropolitan Steamship Company of New Jersey? A I did.

Q Was that oral or written? A That was oral.

Q About when, as nearly as you can remember now, was it that you first heard from Mr. Chase with reference to this matter? A I think it was a very few days before March 4, 1910.

Q And what was it you heard from him? A Mr. Chase came to my office and said that he and some associates were interested in the purchase of a steamship property, and he asked me whether I would be willing to act as the purchaser of the securities that they were to buy; I told him I would do that.

Q Well, did he say anything as to who his associates were? A No, he did not.

Q Did you see him in reference to the matter from time to time after then? A I think I saw him once after that.

Q Did you become the purchaser of those securities? A I did.

Q What, if anything, did you have to do with the financial arrangements which resulted in the providing of the money with which to purchase the securities? A I had nothing whatever to do with that.

Q Did you sign this contract with the Assets Realization Company which is in evidence in this case as Exhibit C. 6, and which is dated March 4, 1910? A I did.

Q Did you sign it on or about the date it bears? A Yes.

Q How does it happen that you were willing at that time to obligate yourself to pay the sum called for by this contract in return for the securities which it provided should be transferred to you? A Well, Mr. Chase told me that the money had all been arranged for, and I was willing to take his assurance to that effect.

Q You felt that you knew Mr. Chase well enough to know that if he made a statement of that kind that it would be fulfilled? A I did.

Q Did you have any part in the preparation of this contract itself? A No, I think not; I think I saw it the day before it was executed, and it was practically finished at that time.

Q And did Mr. Chase say whether or not he was willing to pay the sum which was to be paid through you for the securities that were provided for in the contract to be sold to you? A Yes, he said the money was all arranged for to pay it.

Q Now you were elected as an officer of the company on the following day, I think, were you not? A Yes, treasurer, and a few days later I think elected secretary also.

Q Do you remember what time during the day on March 5th the meeting was held at which you were elected treasurer of the company? A I think it was late in the afternoon.

Q About what hour, if you can remember? A I think it was after four o'clock.

Q Did you receive the securities called for by this contract on that day? A I did.

Q And after you had been elected as the treasurer of the company, which, as I understand, was later in the day? A Yes.

Q Did you also receive from Campbell Carrington the different papers which are listed on Exhibit C. 7? A Yes.

Q What did you do with the securities which you obtained through the fulfillment of this contract? A I sold all of them except the capital stock of the defendant company to Mr. Canfield.

Q What did you do with the capital stock? A I gave that to Mr. Chase, retained that and turned it over to Mr. Chase.

Q How did you come to do that? A Well, Mr. Chase told me that that was part of his arrangement, that all of these securities except the capital stock would be sold to Mr. Canfield, and that the stock was his personal property.

Q So you turned all of the other securities over to Mr. Canfield? A I did.

Q And retained the stock for Mr. Chase? A Yes.

Q How long did you retain that stock? A I think only a few minutes at that time.

Q And then what did you do with it? A Gave it to Mr. Chase.

Q Did it ever come back into your possession? A Yes.

Q About when? A Came back the time of the formation of the Chilmark Company, I think that was in the Fall of 1910.

Q Who formed the Chilmark Company? A I did.

Q Why was it called the Chilmark Company, if you know?

Mr. English. I object to that.

The Court. I am interested to know.

A Well, at the time of the formation of the Chilmark Company I lived in an apartment house in New York that was called Chilmark Hall, and I was thinking of a name for this company, and as I was going home that day I remember seeing the name over the door, and I thought there was an odd name and I would use that.

Q Was the name suggested to you in any other name than that? A No, no other way.

Q Was it suggested to you by anybody else? A No, sir.

Q Tell us how you came to form the Chilmark Company? A Mr. Chase said to me that he preferred to have this capital stock that he owned in the defendant company held by a holding company, and asked me to form a holding company for that purpose, and I think he also told me the amount of the capital stock he wanted the holding company to have; so I formed the Chilmark Company and caused the Metropolitan stock to be sold to it.

Q Did you select the directors of the Chilmark Company? A Yes.

Q Among friends of yours? A Friends of mine, yes.

Q And at the time of the formation of that company you had all of these certificates in your possession? A Yes.

Q And transferred them to the Chilmark Company in return for all of its capital stock? A That is correct.

Q When you received the capital stock of that company what did you do with it? A I gave it to Mr. Chase.

Q Has it ever been returned to you? A Never.

Q Now after you were elected as an officer of this company, it being my understanding that you were first elected treasurer on or about March 5th—

Mr. English. You say "this company," you mean the Metropolitan?

Q I mean the Metropolitan Steamship Company of New Jersey. It being my further understanding that some time after that you were also elected its treasurer. How much of your time did you devote to the affairs of this company? A I devoted a great deal of time to it.

Q Doing what character of work? A Well, during the season of 1910 we had quite a good many things to do; the Metropolitan Maine No. 2 were operating boats, and there were a great many creditors, very pressing creditors of the company, and they frequently communicated with me by telephone, letter and personal calls.

Q Did you have anything to do with the finances of the company at that time? A Yes.

Q In what way? A Well, I was the treasurer and disbursed whatever money was paid.

Q Did you actually perform the duties of the treasurer? A Oh, yes.

Q And did you look into the expenditures for which you paid checks out of the funds of the company? A Oh, yes.

Q In every instance? A In every instance.

Q Did you come in contact with Captain Goodall at all during any of those negotiations that were had in March, 1910? A No; I never met Capt. Goodall until long after that.

Q Had you ever heard of him until that time? A No, I don't think I ever had.

Q When did you first come in contact with him? A Just prior to the execution of the operating agreement between the Pacific Navigation Company and the defendant company.

Q The operating agreement under which the Harvard and Yale were sent out to the Pacific Coast you mean? A Yes.

Q And you met him in connection with the preparation of that agreement? A Yes.

Mr. English. When was that, please?

Q Fix that time as nearly as you can. A Well, it was very close to October 10, 1910.

Q Now at that time you were still the secretary and treasurer of the company? A Yes.

Q And did you or not perform any duties at that time in connection with those offices? A Yes.

Q To what extent? A I executed some papers at that time in connection with sending the boats to the Pacific Coast, and executed contracts for the supplies that they were to take on board in making the trip around the Horn; many papers that needed signatures at that time.

Q Well, did you give a substantial part of your work-day to the affairs of this company at that period? A At that time I did, yes.

Q How was it after the boats went away? A Why, after the boats went away there wasn't very much to do except the taking care of the payments for the supplies, and coal and fuel, and so on, that were taken on by the boats at the different ports at which they stopped.

Q Who took care of those payments? A I did.

Q As treasurer of the Metropolitan? A As treasurer of the company, yes.

Q How long did you continue to be the treasurer? A Until, I think it was March, 1911.

Q By that time the boats had gotten out on the Pacific coast? A Yes; they arrived there in December, 1910.

Q And thereafter the principal part of the revenues of the Metropolitan Steamship Company of New Jersey were those which were derived from the operating agreement under which the Yale and Harvard had been sent to the Pacific Coast? A That is correct.

Q How did you come to cease to be the treasurer and secretary of the company in 1911? A Well, I requested Mr. Chase to be relieved of the duties of treasurer in 1910 when the time came for election of directors, but he requested me to continue, as long as I was familiar with the contracts, which had been made to take the boats around to the Pacific Coast, he asked me to remain until those things were all cleaned up; for that reason I continued until some time in March, I think, and then I resigned.

Q Why did you desire to sever your connection with the company in the Fall of 1910? A Well, I desired to be relieved as treasurer because the creditors of the company were so very numerous and so very persistent that it became rather a nuisance to have them in the office, and writing me and telephoning me so much; I told Mr. Chase I would be glad to continue in a legal capacity for the company, but I did not care to continue as treasurer for that reason.

Q Have you continued to, and did you thereafter continue to represent the company in a legal capacity? A Yes.

Q And in that way were familiar with its affairs? A Yes.

Q Now, did you cease to be secretary of the company at the same time that you ceased to be the treasurer thereof? A Well, I am not sure of that; I could refresh my recollection from the minute book I think.

Q Will you look at the directors' minute book and refresh your mind on that point? A I resigned as secretary April 11, 1911, and I resigned as treasurer on March 27, 1911.

Q And since that time you have not been—

Mr. English. As treasurer or secretary?

A The latter was the treasurer.

Q Since that time you have not been an officer of the company at all? A No.

Q When did you cease to be a director of the company? A In the annual meeting of 1910, it was in November, 1910.

Q I show you the minutes of that meeting in the stockholders' minute book of the company appearing on pages 65 to 72, and I direct your attention particularly to the list of stockholders appearing on page 69, and I want to ask you whether or not at that time any of the stockholders of the company had furnished it with their addresses, other than as appears on that list? A No, not to my knowledge.

Q (*By Mr. English.*) What is the date of this? A November, 1910, the first annual meeting.

Q Had any address then been furnished for William Mossman, one of the complainants in this suit? A No, sir.

Q Or for William C. Watt, another of the complainants? A No.

Q Did you know their addresses at that time? A I did not.

Q When did you first ascertain what their addresses were? A When they testified in this suit.

Q In this pending suit? A Yes.

Q Testified in the depositions given in Boston?

Mr. English. Your Honor, this really is immaterial because there is no suggestion that I have heard that any attempt was made to give personal notice to these people. The books were put in evidence and attention called to the fact that the by-laws provided for notice of the annual meeting by publication, and there appears in the books a certificate of the secretary, I think, that such publication was made and counsel stated that it had in fact been made as certified, to which we made no contradiction; but there is no suggestion that there was any attempt to give any personal notice to these people, and if that is so what is the use of this? It is immaterial.

Q (Question read.) A Yes.

Q I call your attention in the same way to the other lists of stockholders appearing in connection with the various annual meetings of the company which have been held since November, 1910, and ask you whether there was ever furnished you, or the company, so far as you know, the addresses of any of its stockholders other than as they appear on those lists? A No.

Q Did you have anything to do with the serving of the notices of the special meeting of the stockholders that was held last summer? A Yes.

Q How did you come to have anything to do with that? A Mr. Chase wrote me that he wanted to hold a special meeting of stockholders and that he wanted to have—that under the by-laws it required that the notice of meeting be mailed to the stockholders at the addresses appearing on the stock books, and that in default of the addresses that it was to be served personally upon them, and he wrote me that there were several stockholders whose addresses he did not have, and that he wanted me to see if I couldn't find out where they were located and have them served personally?

Q Did you undertake that work? A I did.

Q With what result? A We succeeded in locating them all and had the notices served personally upon them.

Q Well, what did you do in locating them in the way that you have just mentioned? A Well, in the case of Mr. Mossman, he had testified in this case, so we knew where to locate him, he was in Boston, and we sent the notice up to Mr. Read up there in Boston to effect service; we also understood Mr. Watt lived in Boston, because his deposition was taken there, but we received word from Mr. Read that he had moved to New York, and we located him in New York, and Mr. Grieve, in my office, served him; in the case of Miss Jennie R. Morse, some time during this case somebody told me that she lived in Bath.

Q Bath, Maine? A Bath, Maine, and I sent the notice up to our correspondent there, and he had the service made by Deputy Sheriff Norris, who testified in this case.

Q What about Mr. Correll? A William Correll was the name we had on the stock books

of the company, and we in some way learned that he was located in Boston; we sent the notice up there to be served, and they could not locate any William Correll, but the correspondent did find out that there was a man named Covill in the directory, and he went and interviewed him and found that he owned one share of stock of the company, or had owned one share, and served him personally there.

Q I think it already appears that Mr. E. B. Wire, the holder of one share, was located in Newark? A Yes, Mr. Grieve of my office located him there.

Q Do you know where he tried to find him before he located him in Newark? A Yes, he tried the Assets Realization Company, and I think they furnished him with an address, and then he went there and found he wasn't there any more, and finally located him in Newark or Harrison I believe.

Q Now, during the time that Mr. Greening was acting as trustee under the second mortgage did you come in contact with him at all? A Oh, yes, very frequently.

Q In what way? A Well, under the resolutions of the directors I was required to countersign his checks as trustee under the sinking fund agreement.

Q Countersign all checks that were drawn for the making of any payment by him? A Yes.

Q And did you do that? A I did.

Q So that whatever moneys were paid out by Mr. Greening while you were an officer of the company were paid out on checks countersigned by you? A That is correct.

Q Did you or not, before countersigning any such checks, ascertain for what the payment was to be made and satisfy yourself as to whether or not it was a proper debt of the company? A In every case.

Q Mr. Nicholson, at any time before the bill of complaint in this suit was filed, had you ever heard it suggested by anyone that the New Haven Railroad Company, or any of its subsidiaries or affiliated corporations, were anywise interested in the Metropolitan Steamship Company? A I don't think that I ever did.

Q Well, how certain can you be about it? A I haven't the faintest recollection of any suggestion of that kind being made to me.

Q Did you know anyone in the transaction at all, other than Mr. Chase? A No.

Q And you understood that you were acting solely for him and in his personal capacity?

Mr. English. Let him say what he understood. I object.

A I did.

The Court. The questions are leading; if you want to object, object to them on that ground.

Mr. English. Yes, I do object.

Q What did Mr. Chase ever say to you with reference to anyone who was interested in the Metropolitan Steamship Company's stock or securities? A Why, he told me that he was the sole owner of the stock of the company, and that he wanted me to help him to try and make that stock valuable.

Q Did you ever know anything at all about the other securities? A Not until some time after my purchase of them.

Q What did you learn with reference to them then? A I think the first time I learned about them was when the second mortgage was put upon the boats I learned then that the Pacific Company held some of those securities.

Q Did you ever learn anything more about any of them, other than that? A No.

Q So far as you know, or have any reason to believe, is the New Haven Railroad Company or any of its subsidiaries or affiliated companies or interests in anywise interested in any of that stock in any of those securities?

Mr. English. I object to that.

The Court. I will exclude it in that form.

Q Do you know of anything with reference to any possible ownership or interest of the New Haven company, or of its subsidiaries or any of its affiliated companies or interests, in either the stock or the other securities of the Metropolitan Steamship Company of New Jersey? A No.

Q Now at any time after you became connected with the company did it operate the freight boats? A No.

Q Had parted with the ownership of them before that time? A It had.

Q And by whom were they owned and operated during your connection with the company? A Well, I know now that they were operated by the Metropolitan Maine No. 2.

Q Had the Union Wharf been disposed of before your connection with the company? A Yes.

Q To Mr. Canfield? A Yes.

Q Mr. Nicholson, have any of the stockholders of this company, with the exception of Mr. Fernald, ever asked you for any informa-

tion with reference to the company's affairs? A No, sir.

Q Or communicated with you in any wise whatsoever? A No.

Q Mr. Fernald testifies that he asked you for some information in the Fall of 1910 with reference to the boats going out to the Pacific coast; at that time were you in a position to give him any information on that subject? A No, I was not.

Q Had you ever refused to give any stockholder or any creditor of the company any information when it was asked for that you had? A No.

Q Did you have any part in the preparation of the operating agreement that was entered into with the Pacific Navigation Company in the Fall of 1910? A I think that was all completed, practically completed before I saw it; I may have suggested some few minor changes at the finish, but the agreement had practically been prepared before I saw it.

Q Did you examine it before it was executed? A Oh, yes, very carefully.

Q With your knowledge of the company's affairs, and as a result of the examination of that contract and the entire situation, were you able to form any judgment as to whether or not that contract was in the interest of the Metropolitan Steamship Company?

Mr. English. I object.

The Court. Yes or no?

A Yes.

Q What judgment did you form?

Mr. English. I object to that.

The Court. He was a director at the time. You voted for it?

A Yes.

Mr. English. I thought that was for your Honor to say.

The Court. I will take the judgment of the director for what it is worth.

A I considered it a most advantageous contract for the company, and I believed that if that contract or some similar contract was not formed that the company would have been in bankruptcy in a very short time.

Q What was its financial condition at that time, as far as you know? A Well, I know it had something like eleven thousand dollars in cash.

Q (*By Mr. English.*) What date are you speaking of? A About October 10, 1910, the time the operating contract was executed. I knew that in the following November, or rather the following January, the company would have to pay fifty thousand dollars interest on its first mortgage indebtedness, and I knew that during the winter there would be the upkeep of the boats, if they remained here, which was a very large amount, they would have to be prepared for the voyage in the Spring, and I knew also that the insurance upon the boats would have to be paid along in the Spring of the following year, that is in the Spring of 1911, and I couldn't see where we were going to get the money to make those payments unless a contract of this kind were made.

Q Do you know how the expenses of the company were met between March, 1910, and October, 1910? A Yes, they were paid by the Maine

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Company No. 2 and charged up against the defendant company's proportion of the earnings under the operating contract between those two companies.

Q Do you know what the expense was of getting the boats ready for operation in the summer of 1910, and which expense was thus met by the Metropolitan Steamship Company of Maine? A Yes; it was $179,000, as I recollect it.

Q Do you know how much of that represented the expenses involved in changing the boats from coal burners to oil burners? A I know that,—I was told that it was about $50,000.

Q And those payments were all met by Maine No. 2 and then charged up to the Metropolitan Steamship Company under the operating agreement that was in force at that time? A Yes.

Q During the time you were an officer of this company did you ever take any action or vote in any way other than that you believed to be for the best interests of the company and all of its stockholders?

Mr. English. I object to that.

The Court. I will admit it.

A No.

Q And have you any reason to think now that any such action or any such vote proved to be otherwise than in the best interests of the company and all of its stockholders?

Mr. English. I object to that.

The Court. I exclude that.

Q Were you ever influenced at any time during your connection with the company in any such action or vote by anyone connected with the

New Haven Railroad Company or any of its interests?

Mr. English. I object to that.

The Court. I will exclude that. How can he know whether they were connected with the New York, New Haven & Hartford or not? He may say who he was influenced by, or he may say that he was not influenced by anybody to his knowledge.

Q Were you to your knowledge influenced by anyone in any such action or vote which you ever took? A No, sir.

Q You had no part, as I understand, in the arranging or carrying out of any of the financial deals that were involved in the transactions of March, 1910? A None whatever.

Examined by Mr. Ward.

Q In October, 1910, the time of which you have spoken, did the company have any current liabilities, and, in general, what were they? A I do not think I can state that from recollection.

Q Do you remember when the two-year notes of the company were due? A Yes, they were due in November, 1911.

Q And was that fact also present in your mind at the time when you made this contract? A Yes.

Q Those notes bore interest, did they not? A They bore 6% interest.

Q Will you state whether an installment of interest was due in November, 1910? A No, I cannot state that, I do not remember.

Q Referring to the same time, do you recall what, if any, current assets the company had in addition to the cash which you have spoken of? A I do not think they had any.

Cross examination by Mr. English.

Q What date are you speaking of? A October, 1910.

Q How long have you lived in Mt. Vernon? A About four years.

Q And formerly you lived in Brooklyn? A No, I never lived in Brooklyn.

Q Well, I thought you said the Chilmark apartment you lived in was in Brooklyn? A No, that was in New York.

Q Those incorporators that you selected to act for you in the formation of the Chilmark company lived in Brooklyn, did they not? A Two of them lived in Brooklyn and one in New York.

Q You happened to be acquainted with them? A Yes.

Q Now I understood you to say that you had no responsibility in the providing of this money? A That is correct.

Q You were substantially put in possession of a million and a half dollars to act as the buyer? A That is right.

Q Did you say today that you had the money before you signed the contract? A No, I did not.

Q You had faith enough in Mr. Chase to obligate yourself to the tune of a million and a half? A I did.

Q How long a time elapsed between the time, when you signed the contract, Exhibit C. 6, and the time when you were put in possession of the money, or in a position to deliver over the money?

A I should say less than twenty-four hours.

Q When this thing came to you it was already made, so to speak, all you had to do was to sign as a nominal purchaser? A Do you mean that contract?

Q Exhibit C. 6, this contract between you and the Assets company? A I went over it the day before I signed it, and it was then complete.

Q You did not assume any responsibility for the negotiations which resulted in that paper? A None.

Q They had all been taken care of? A That is right.

Q This came to you from Mr. Chase's hands practically ready for you to sign? A Yes.

Q Except that you went through the motions of going over it before you actually signed? A Naturally I wanted to know what it said before I signed it.

Q You were satisfied to sign that paper and obligate yourself to the extent of a million and a half on his mere representation? A Yes, on his assurance.

Q Where did this conference between you an Mr. Chase take place at which you went over this paper? A In the office of the Assets Realization Company.

Q Who was there at the time? A Mr. Carrington, I think.

Q Anybody else? A I don't think so.

Q On what day did it take place? A I think it took place the day before it was signed.

Q The day of its date? It is dated March 4th. A I think it took place the day before, it certainly was before the day it was signed.

Q That would be March 3rd? A As near as I can recollect.

Q Was that your first visit to the office of the Assets Company? A It was.

Q In connection with this matter? A In connection with any matter.

Q What time of day was it you were there? A I should say it was in the afternoon, I really am not positive as to that.

Q At the time the paper was actually signed you say Mr. Carrington was there? A No, I said that the day I went down to look at the paper, the day before it was signed, he was there.

Q We will confine ourselves to that. Then the preliminary negotiation which you participated in when you examined the paper to be signed was in the presence of Mr. Chase and Mr. Carrington? A Yes; I wouldn't say it was a preliminary negotiation; I simply went down with Mr. Chase and read over the contract, and I think Mr. Carrington was there while we were reading it over.

Q Did you see anybody else down there? A Not at that time.

Q How long did that preliminary last? A I should say perhaps three-quarters of an hour.

Q You saw nobody in the matter but Mr. Chase and Mr. Carrington? A That is right.

Q You were down there the day the paper was signed, which was March 4th? A Yes.

Q Who was there with you? A Mr. McKinnon was there, and Mr. Shaw and Mr. Carrington and Mr. Chase.

Q Anybody else there? A There were some clerks there that took the acknowledgment to the papers.

Q Did you see Mr. Marshall? A No.

Q Did you see Mr. Robbins? A No.

Q Not at that time? A No.

Q Now the next day, which was March 5th, the thing was closed out? A Yes.

Q How much of the day did you devote to that transaction? A Well, I should say that I was in the Chase bank there probably half or three quarters of an hour.

Q That was the day that this cashier's check on your behalf for a million and a half dollars was produced? A Well, I received two checks from Mr. Canfield aggregating a million and a half.

Q That is the first you saw of the money? A Yes.

Q Or the evidence of the money? A That is right.

Q What time of day did you get in touch with Mr. Chase on the matter that day? A I think it was either noon or a little after twelve o'clock on that day.

Q Did he say why the actual closing was postponed until afternoon? A No. The day before when we signed the contract he asked me to meet him in the bank, I think, at twelve o'clock.

Q You were there at the closing out of the matter in the bank? A Yes.

Q Mr. Carrington was there? A I think he was.

Q And Mr. McKinnon? A Mr. McKinnon was there.

Q Mr. Chase? A Mr. Chase.

Q And Mr. Robbins? A No, I didn't see Mr. Robbins.

Q Not at all that day? A No.

Q You swear you did not see Robbins at all on March 5th, the day it was closed up? A I will swear to the best of my knowledge that I did not see him.

Q How good is your knowledge? A I didn't know Mr. Robbins at that time, but I do not recollect having seen him, I certainly did not talk to him, and I do not think I saw him.

Q You heard Mr. Chase testify he was there, in and out? A I heard him say he was in touch with him.

Mr. Faulks. I do not think he so testified.

A He said he was in touch with him.

Q Mr. Chase said he was not actually in the room when the securities were delivered over and the check passed, but that he was there right afterwards, and was in and out previous to that.

Mr. Faulks. That is quite different to my recollection of Mr. Chase's testimony.

Mr. English. Well, I suppose we can look it up.

The Court. The question is improper anyway.

Q So you paid your money, the money that was given to you to pay, and you got the securities? A I did.

Q Then you sat right down and signed an agreement with Mr. Canfield, did you not? A Yes; that agreement was signed at the time the the securities were delivered and the moneys turned over, it was a simultaneous transaction.

Q Was it signed before? A I do not recollect whether it was just before or after; I think it was done before, because I got the money from Mr. Canfield.

Q Mr. Canfield must have been there too? A He was there, yes.

Q I didn't remember that you mentioned him. And you sold, or went through the motions of selling, to Mr. Canfield all the assets that were sold to you, except as to the shares of stock? A I sold to Mr. Canfield all the securities except the stock.

Q Did he pay you any real money for it? A He paid me either certified checks, or cashiers' checks for the million and a half.

Q The same checks, the same money?

Mr. Faulks. As what?

Q Well, we have had all that before. So you signed this agreement with Mr. Canfield. Now, do you remember, without referring to the receipt which you gave Mr. Campbell Carrington, what you received from him on March 5, 1910? A Well, I think I remember it was the minute books of the company, and I think it was a release from the Trust Company, and I think a contract between, some contract between the company and Mr. Canfield.

Q Yes. A And I do not remember the other items.

Q You also got this original agreement of March 4th, Exhibit C. 6, did you not? A What agreement is that?

Q No, I am wrong. You got the original release from McKinnon with aspect to the India Wharf? A I got all the papers that were mentioned in the memorandum.

Q You got all the correspondence and other papers of the company, did you not? A I got whatever that receipt said.

Q Well, after this little affair at the Chase National Bank was over you all adjourned to the office of the Assets company, did you not?

A That was later; I think I went back to my office after.

Q I mean the same day? A Yes, later in the afternoon.

Q And there you had a meeting? A Yes.

Q Corporation meeting? A Yes.

Q Now, when that was over you were put in possession of everything, were you not? A I was only put in possession of what I received.

Mr. Faulks. Is not that rather indefinite?

Q Everything relating to the affairs of the company? A The only thing I was put in possession of was what was referred to in that receipt; I remember Mr. Carrington was very particular to get a receipt for what he delivered.

Q This receipt mentioned a valuable set of papers. Now the Assets people had no further interests in the company after that, did they? A No, as far as I know.

Q No reason for them to retain anything? A No.

Q They gave you all the books and papers mentioned in the receipt, and all the files and correspondence and everything else, did they not?

Mr. Faulks. The witness has stated two or three times that he only received what was mentioned in this receipt.

Mr. English. He said he got that, but he has not said he got anything else.

Q (*By the Court.*) Did you get anything else other than that referred to in the receipt? A No.

Q Did you get any copies of correspondence or original correspondence from Mr. Carring-

ton? A Yes, I think I got some files from him.

Q That is what I am trying to find out. He gave you in addition to these papers practically all the correspondence and everything else relating to the company? A I think that receipt, Mr. English, covers everything.

Q This receipt does not mention correspondence. You say he gave you some files of correspondence? isn't that a fact? A I think he did.

Q Well he has already testified so; do you remember that; you were present. A I haven't that in mind, if you did.

Q Among the papers or things which are mentioned in this receipt, C. 7, is duplicate deposit slip Chase National Bank, and covers a deposit of $266,387.13, do you remember that? A Yes.

Q That means that that amount of money was in the Chase Bank to the credit of the Metropolitan Company when the turnover was made?

Mr. Faulks. How can he know that?

A It means a deposit of that kind must have been made.

Q If a deposit was made presumably the money was there? A I wouldn't say that, Mr. English.

The Court. That does not follow.

Q This indicated that they had made a deposit of that amount? A Yes.

Q That was a part of the consideration which was turned over to you in payment of the checks, was it not?

Mr. Faulks. I object to that. If your Honor please there is nothing to warrant that statement.

A I do not just understand that question.

Q You paid the Assets people a million and a half dollars? A Yes.

Q For which they were to give you certain specified properties? A Yes.

Q Among the things they were to give you was the stock of this company? A Yes.

Q And the first mortgage bonds? A Yes, that is right.

Q Or some of them? A Yes.

Q And two-year notes? A Yes.

Q And some ten-year notes? A That is right.

Q Also a certain amount of cash in bank? A No, I do not remember that that was specifically stated, unless it was attached to the schedules annexed to the original agreement.

The Court. Have we not gone into that? Did not that cash in bank go to the Metropolitan Company itself?

Mr. English. Yes, and then they paid it out for their own bonds.

The Court. So far as that is concerned it did not go to Mr. Nicholson.

Mr. English. Well, if he is quibbling on that I will change the form of the question.

Q When you took the company over as the largest stockholder through this transfer, and became elected treasurer, did you find that there had been a deposit in the company, and as received by you as treasurer of the company, among other things, the sum of $266,387.13?

A I really cannot say whether there was that much money or not, I do not know.

Q (*By the Court.*) There was a large sum, was there not? A I do not even remember that; I remember that a deposit slip showed that a deposit had been made; whether it was in there at that time or not I do not know.

Q Very shortly after that there came into the possession of the company a large sum of money didn't there? A No, I don't think so; I do not think the company got any more money than shown on that deposit slip.

Q Well, it got as much as is shown on that slip, did it not? A It must have received that.

Q In other words, the people who were paying this money through you were not going to pay the money if they did not get what was called for, were they?

Mr. Faulks. I object to that.

The Court. I will exclude that; that follows.

Q You got what was called for in this receipt, did you not, C. 7? A Yes.

Q And this receipt, among other things, called for a duplicate deposit slip in the Chase National Bank covering a deposit of $266.387.13, did it not? A If that is the amount stated, yes.

Q That is the amount stated in the exhibit. Now, when you became treasurer of the company on that election which immediately followed, the same afternoon, you as treasurer became possessed of that fund, did you not? A Whatever there was in the bank, yes.

Q Do you remember shortly thereafter, or at that time, drawing out a large sum of

money to the order of the Hudson Navigation Company? A No, I do not.

Q You do know that the Metropolitan Company, of which you were treasurer, purchased three hundred and forty-seven bonds of the Hudson Navigation Company at eighty, do you not? A No, I do not.

Q You don't know that? A No, I don't think they did.

Q When did you first hear that surprising news? A I never knew the company ever purchased those bonds.

Q You knew the bonds were purchased from the Hudson Navigation Company, did you not? A Not at that time.

Q When did you first find that out? A I think soon after this case started.

Q That is the first you ever heard of it? A I think it was.

Q Had it all been drawn out before you got in? A I haven't any recollection of having drawn out any large sum of money.

Q Then will you tell the court what became of that $266,387.13 which the company received, and let me add to the question the fact that the accountant who was on the stand could not show us what became of it; can you tell us what became of it; he couldn't show us from the books what had become of it? A No, I cannot.

Q You were treasurer of the company. A Yes.

Q You had power to disburse the money? A I did.

Q And so far as you are able to say the large sum of over two hundred and sixty-six thousand dollars completely disappeared with-

out your knowledge? A Oh, I don't say that; I say that I haven't any recollection of having paid out any large sum of money at that time.

Q Oh, you were dealing in such large sums then it didn't make any impression? A Well, I couldn't say that either.

Q You cannot point to any entry in the books for this, can you? A I do not know; I didn't keep the books.

Q You were treasurer, and they were kept under your direction, were they not? A I never kept the books myself.

Q You were paid for your services as treasurer? A Yes.

Q The treasurer ordinarily is responsible for the books? A Ordinarily, yes.

Q You have already testified that you performed your duties as treasurer, and you now admit that that included charge of the books; can you, as treasurer, responsible for the books and paid for your services, point to anything in the books to show what became of those two hundred and sixty-six thousand dollars? A No, I do not think I can; I think they were probably in the other books.

Q What do you call the other books? A There are some books called the New York Agency books, that I understood were destroyed in the pier fire.

Q Did you ever see them? A I don't think I did.

Q You do not know whether it was in or not, do you? A No, I do not.

Q You do know that as a matter of fact three hundred and fifty thousand dollars of bonds were turned into the American Trust

Company in cancellation of the lien on the Union Wharf, do you not? A Yes.

Q You know as a matter of fact that three hundred and forty-seven of those bonds came from the Hudson Navigation Company? A Yes.

Q You do not know where the money came from which went to the Hudson Navigation Company? A No, I do not.

Q Who do you suppose in the world does know what? A I think Mr. Canfield would know; I think he is the one that purchased it.

Q You think he would know? A Yes.

Q Was that Canfield's personal money? A I don't know.

Mr. Faulks. He said he didn't even know the bonds were bought.

Q Well now, did you authorize anybody to pay out that sum of money?

Mr. Faulks. I object to that, if your Honor please.

Mr. English. He is the treasurer.

A I didn't authorize anybody.

The Court. But he has already reiterated that he doesn't know a thing about it, and you have the full benefit of that.

Mr. English. But with one breath he is held up here as the treasurer and paid for his services, and—

The Court. But he says he doesn't know a thing about it. You can argue on that as much as you like.

Mr. English. You won't let me ask him whether he authorized the payment of that?

The Court. I think you have gone far enough to demonstrate that he doesn't know a thing about it, or at least he says he does not know.

Q Did you ever have the bank book of the company balanced up about that time to check things up? A They were balanced up from time to time by the accountants.

Q Well, how early after March 5, 1910, was it balanced to your knowledge? A I don't know, Mr. English.

Q The stock which you bought from the Assets company was not transferred to your name on the books, was it? A I think one certificate was shortly after that.

Q By you as a director? A Yes.

Q But the balance was not? A No.

Q When did you turn that over to Mr. Chase? A I think just at the time that I received it from Mr. Canfield.

Q He didn't have it transferred in his name either, did he? A I don't think he did.

Q When was it you formed the Chilmark company? A My recollection is it was in the Fall of 1910; I know it was some space of time after the stock was purchased.

Q What became of the stock in the meantime? A Mr. Chase had it.

Q In his physical possession? A Yes.

Q When was it Chase told you he owned that stock? A Told me so at the time that I purchased it from Mr. Canfield, the time the delivery was made.

Q Did he tell you how it came about that he was going to own that stock? A No, he simply told me that that stock was his personal property and that he was purchasing it.

Q He did not pretend that he put up any part of the money that went to purchase the stock from the Assets company, did he? A He never explained to me what part of the money he put up.

Q So when he said that that stock was going to him that satisfied you? A Yes.

Q Has the certificate of stock in the Chilmark company which you own, or which you did own at one time, in exchange for the sale, the nominal sale of the stock of the Metropolitan company, been transferred to Mr. Chase's name? A I am not sure of that.

Q If it is not in his name it is in your name? A Probably in mine, endorsed in blank; I know he has possession of it.

Q It is in his possession? A Yes.

Q You said you devoted a great deal of time to the office of treasurer, notwithstanding you do not seem to know how they got two hundred and sixty-six thousand dollars away from you; what else did you do?

Mr. Faulks. I move that that be stricken out.

The Court. Strike it out.

Mr. English. That is the evidence.

Mr. Faulks. There is no evidence that that money was in the bank at the time Mr. Nicholson became treasurer of the company, and it is unfair to say that the money was taken away from him.

The Court. I strike it out.

Q What else did you do as treasurer of the company; what other duties did you perform? A I paid all the bills.

Q During what season? A During the season of 1910.

Q There weren't very many bills to pay, except old bills left over? A Well, those were quite numerous.

Q Did you draw the checks, or your clerks draw the checks and you sign them? A The accountants drew all the checks and I signed them.

Q Anybody countersign them? A Yes.

Q Who? A The auditor of the company countersigned them.

Q Who was that? A Mr. Ritchie.

Q Then you say you paid the bills to take the ships around to the Pacific coast? A Yes; I should qualify that by saying that I authorized Mr. Chase, who held one hundred and fifty thousand dollars as trustee, to pay those bills after I approved of them.

Q Where did Mr. Stewart come in on that matter? A Mr. Stewart came in when the boats arrived at the Pacific coast; he was sent out there to check up the supplies on board, to see that the Pacific Navigation Company paid for them, and to pay off the crew.

Q When did you first become acquainted with Mr. Stewart? A The time that he became claim agent, I think it was shortly after I became treasurer of the company.

Q And that was about in March, 1910? A March, 1910, yes.

Q When did you know that Mr. Stewart had been selected to go out to the Pacific coast? A Mr. Chase spoke to me about it, and he said he would like to have him sent out there to do that work.

Q Who picked him out to go out there? A Mr. Chase.

Q As far as you know? A Yes, as far as I know.

Q That came to you through Chase? A That is right.

Q When was it that he started out for the West? A Well, the boats arrived out on the coast on December 16th, I think, and he went out just in time to meet them there.

Q What time of year was that? A Why, it was in December, 1910.

Q Before that he had been claim agent for your Metropolitan company? A Yes.

Q Do you know what he had been doing before that? A No.

Q Never heard of that? A Except I heard some testimony in this case, but nothing of my own knowledge.

Q You accepted him as handed to you by Chase, without looking him up at all? A Yes.

Q As far as you were concerned? A Yes.

Q Did you know whether or not he had ever been associated with Mr. Robbins? A No, I did not.

Q After Stewart got out there on the Pacific coast did he run short of funds, do you know? A Yes, I think we had to get the first payment in advance from the Pacific Navigation Company to use to pay off the crews and supplies there.

Q He wired you to the effect that he needed some money, did he not? A He may have; I don't recollect that.

Q You won't say he did not? A No, I won't say he didn't.

Q When you got that wire or news of the fact that he needed money, what did you do? A I probably communicated with Mr. Chase.

Q Will you be sure about it? A That will be the natural thing to do.

Q Did you communicate with anybody else? A No.

Q Nobody else? A No.

Q How did you get in touch with Mr. Chase, do you know? A Probably by phone, that is the way I usually did.

Q What did Chase say? A Well, I really haven't any recollection of that incident; I am simply telling you what I think I probably did.

Q Do you know whether Stewart wired anybody else besides you? A No, sir.

Q Never heard of that. You say Mr. Case had one hundred and fifty thousand dollars of this company's money? A Yes.

Q Where did he get that from? A That was part of the proceeds of the second mortgage bonds.

Q When was it they were placed? A Just the time the operating agreement was signed, October, 1910.

Q Did any of that money come to you, the proceeds of the second mortgage bonds, to you as treasurer, I mean? A Yes.

Q How much of it? A I think one hundred thousand dollars.

Q And Case had one hundred and fifty thousand dollars? A That is right.

Q That was spent in meeting the expense of the Harvard and Yale going around to the coast, or some of it? A And in preparing them for the voyage, and for the insurance, and so on.

Q What services did you perform as secretary, besides signing the minutes and attend-

ing the meetings? A I executed papers and put the seal of the company on.

Q You didn't have to draw up any papers, did you? A There were quite a few, yes, there were certificates required by the American Trust Company, and certificates from the banks, and things of that kind.

Q Well, that would be copied out of the minutes and the attestation put on and signed by you as secretary, isn't that so? A Yes; they were formal certificates, a good many of them.

Q Will you say what you were paid as treasurer and secretary during this time? A I really do not recollect.

Q Don't remember whether it was large or small? A No, I don't recollect just what it was.

Q I suppose the checks are burned up that paid you? A I don't know whether that is so or not.

Q Well, can you produce any checks? A No, I haven't any checks.

Q Going back a moment to the time when Stewart was out on the Pacific coast and found himself embarrassed for money, were you present at the trial of the New Haven directors at New York? A Yes, I was a witness there one day.

Q Did you hear Mr. Stewart when he gave his testimony? A No, sir.

Q Since you retired as an officer of the company you have been paid moneys as attorney, have you not? A Yes, sir.

Q And you have done a good deal of work for them since? A Quite a lot.

Q In preparation of this case I suppose? A That is only one thing.

Q There wasn't much else, was there? A Oh, yes, quite a little.

Q You got a check on June 29, 1915, for quite a substantial amount from Mr. Greening, did you not? A If it is in that book there I did.

Q It is in the book under stub number 79, $4,211.43. A That is correct.

Q This says it was per Chase letter. Did you apply to Mr. Chase for the money and he had Mr. Greening send it to you? A Under Mr. Greening's arrangement he only can pay on the authority of the treasurer of the company; I think Mr. Chase was treasurer that time.

Q Did you countersign checks for Greening? A I did while I was treasurer.

Q Mr. Chase did too? A Not while I did.

Q After you got out? A After I got out, yes.

Q How many did you countersign for him? A Oh, a great many, paid the interest on the first mortgage bonds, and insurance and things of that kind.

Q Did you testify in this matter at Washington? A No.

Q You were down there, weren't you? A No, sir.

Q Now, you say in October, 1910, when you were secretary and treasurer you did not have the address of Mr. Mossman or Mr. Watt? A That is right.

Q You didn't try to locate either of them did you? A No, I don't think I did.

Q You didn't undertake to send notice to either of them for this meeting, did you? A No, we advertised it.

Q You could have located Mr. Watt if you wanted to, couldn't you? A Well, I don't know.

Mr. English. I will ask the other side to produce the letter which I noticed them to produce, which is from Mr. Bowen, secretary of the American Trust Company, to Campbell Carrington, treasurer, dated January 23, 1910. The witness having testified that all the correspondence was turned over to him.

A I don't think I testified that all correspondence was; I think I said he turned over some files to me.

Mr. Faulks. I never heard of that letter, Mr. English, and haven't any way of locating it.

Q Maybe the witness has; I will show him a copy of it. I show you copy of letter from Bowen, secretary of the American Trust Company, to Campbell Carrington, treasurer, dated January 23, 1910, and I ask you if you ever saw the original letter of which that is a copy? A I do not think I ever did.

Q When did you first learn that Mr. Watt was connected with the American Trust Company? A I think when he testified in this case, that is in Boston.

Q When you were getting ready for that meeting in October, 1910, you did not go through the files and make any effort to locate the addresses of the stockholders, did you? A I don't think that I did, no.

Q You just advertised in the newspaper, as the by-laws provided for? A Yes.

Q So then the fact of whether you did or did not have knowledge of those addresses really did not make very much difference?

The Court. I will strike that out. You are arguing with the witness.

Q The registered bondholders had their addresses registered with the company, didn't they? A I don't know that.

Q And in the course of your duties as secretary and treasurer you never encountered that fact? A No.

Q You say you met Mr. Robbins in connection with the preliminaries which led up to the signing of those papers on March 5, 1910; when did you see him next after that? A I never testified to that.

Q I understood you to say that; if I am in error you can correct me? A You are in error.

Q Did you meet Mr. Robbins previous to March 5, 1910? A No, sir.

Q Never saw him before that? A Never.

Q When did you first see Mr. Robbins? A The best of my recollection the first time I ever saw Mr. Robbins was after this case was started.

Q Not until then. Now did you ever talk to Mr. Robbins over the phone before this case began? A No.

Q You had all your transactions with Mr. Chase? A Entirely.

Q Did you know where the money came from which was given to you for the purpose of making this purchase? A Well, Mr. Canfield of course paid it to me for the securities which he purchased; other than that I didn't know.

Q Well, did you know where the money came from which you turned over, nominally turned over, to the Assets company? A That is the money I received from Mr. Canfield.

Q You sold the securities to Canfield before you got them from the Assets company? A Well, it was a simultaneous transaction.

Q Did you know where that money came from that Canfield turned over? A No, I didn't know.

Q Had you ever heard of the New England Securities Company in the matter? A No, sir.

Q Or the Billard company? A No.

Q Or the New England Navigation Company? A No.

Q When did you first hear of the Pacific company in this transaction? A At the time that the second mortgage was put upon the boats.

Q And that was when? A That was in October, 1910.

Q Did you know that that arrangement, and second mortgage, was for the purpose of financing the Harvard and Yale to the Pacific coast? A Yes, for taking care of those two-year notes which would be due in a year, and for raising sufficient money to take the boats around to the coast.

Q Did you know Mr. Robbins' relation to that transaction? A No, I did not.

Q You operated through Mr. Chase in that matter, I suppose? A All my conferences were with Mr. Chase.

Q You said some two-year notes came due about that time? A They were due in November, 1911.

Q And they were exchanged for these second mortgage bonds? A That is right.

Q Who did you understand held those two-year notes that were thus exchanged? A I understood at that time the Pacific company.

Q Who did you understand the Pacific company to be? A Well, that I didn't know.

Q Did the Pacific company make any demand on you for the payment of those two-year notes which operated on your mind to acquiesce in this second mortgage? A No; they were not due at that time; there was accrued interest on them.

Q Was this second mortgage a product of your judgment in the interest of the company? A Well, together with Mr. Chase, we talked it over.

Q Mr. Chase's judgment had some influence on yours in that respect? A Oh, yes.

Q Do you know who held the demand notes for three hundred and odd thousand dollars? A No, I did not.

Q Well, what has become of those demand notes, are they still outstanding? A No, they have been paid.

Q When were they paid? A Well, I don't know.

Q While you were treasurer? A I think ninety-five thousand of them were paid while I was treasurer, but I think that is all.

Q Do you know where the money came from that paid that ninety-five thousand?

Mr. Faulks. I object to that as immaterial, if your Honor please.

Mr. English. He is the treasurer of the company.

The Court. Let him answer if he knows.

A No, I don't know.

Q Do you know who the money was paid to for the ninety-five thousand? A No.

Q You were treasurer of the company then? A Yes.

Q The balance of those notes you don't know anything about at all? A No, sir.

Q When were the ninety-five thousand paid, as you understand? A I think they were paid in the fall of 1910.

Q Don't you know that the others were paid off before that date? A I think they were, yes; I do not think they were outstanding at that time.

Q Do you know whether they were paid during your regime as treasurer? A I do not think they were.

Q Were they paid off before you became treasurer? A I don't know.

Q Do you know whether two hundred and eighty thousand or thereabouts were paid the day you became treasurer? A No, I do not.

Q If they were not paid while you were treasurer you never concerned yourself to look back and see whether they had been paid? A No.

Q Those demand notes were included in this contract which you made with the Assets company, weren't they? A Yes.

Q You knew when you made that contract that they were an obligation of the Metropolitan Steamship Company? A Yes.

Q You were buying them as such? A Yes.

Q Having made the contract with that knowledge you have no knowledge how they became paid off? A No, I have not.

Q Did you have them physically in your possession at that time? A I did when they were delivered.

Q What did you do with them? A Turned them over to Mr. Canfield.

Q On the morning of March fifth? A Yes, well, noon-time, it was in the Chase Bank there, the day the transaction was closed.

Q You became treasurer that same afternoon? A Yes, that is right.

Q After you became treasurer those notes never came back to plague you? A No.

Q You said it was your judgment that the contract with the Pacific Navigation Company was a good thing? A Yes.

Q What experience have you had as a ship man to form such judgment? A Nothing except in connection with this company.

Q The contract was made in October, 1910, was it not? A Yes.

Q At the end of the operating summer season? A That is right.

Q During that season they had operated—and when I say "they" I mean the Metropolitan Steamship Company—had operated the Harvard and Yale? A Not the defendant company.

Q No, it had been operated for them by the Maine No. 2, as we call it. A Yes.

Q That was Mr. Robbins' company, as the evidence shows; is that your understanding, too? A Well, I understand so now, I didn't at that time.

Q Whose company did you suppose it was at the time you made the contract, or participated in making the contract with Maine No. 2?

A I really didn't know; I knew Mr. Austin was the president of it.

Q Who did you deal with when you executed the contract which put those ships in the possession of the Maine No. 2? A I think that contract was already executed on behalf of the Maine No. 2 when I executed it.

Q You mean it came to you already to sign? A Yes.

Q Who got it into your possession, Mr. Chase? A Yes.

Q Did you understand whether Mr. Chase had any connection with Maine No. 2? A No.

Q Did you inquire of him about it? A I do not remember whether I did or not.

Q So as far as you knew that Maine No. 2 was an entirely irresponsible company? A No, I hadn't any knowledge of that.

Q Hadn't any knowledge one way or the other, and without any knowledge as to the character of that company you were satisfied to sign an agreement on the fifth of March, 1910, for the leasing of the Harvard and Yale during the season of 1910? A I know Mr. Calvin Austin was president of that company, and I knew by reputation that he was a very competent man to run them; that influences me as much as anything.

Q Did you know whether Austin had any real financial interest in it or not? A I didn't know, I supposed he was president and he had.

Q You have learned now he didn't have? A I heard it so testified.

Q You said that in October, 1910, this company was reduced to eleven thousand dollars? A Yes.

Q Was that because of the unsuccessful operation of the Harvard and Yale by the Maine No. 2? A It was as a result of that operation I should say.

Q This was a sort of percentage contract made between the Metropolitan of New Jersey, of which you were treasurer, and the Maine No. 2? A Yes.

Q And if the operation was not successfully carried out your company didn't get any money? A We were to get eighty-five per cent. of the net operating revenue.

Q It depended on the success with which the thing was operated? A Yes.

Q And as a result of the operation you found yourself with only eleven thousand dollars? A Yes, that is right.

Q Previous to that the Harvard and Yale had been operated at a profit, hadn't they? A Not that I know of.

Q Then you have not examined the minutes of the company of which you were secretary very carefully, have you? A I have seen reference in the minutes that they were operated at a profit.

Q And that made no impression on your mind; is that right? A Why, certainly it made an impression when I read it.

Q Do you remember that those minutes do say that the Harvard and Yale had been run profitably; you remember that, do you not? A Yes.

Q Had you any reason to doubt that fact? A Why, I didn't know anything about that.

Q Did it cross your mind that it might be a funny thing if the Harvard and Yale had been run profitably before that that they were run

so unprofitably during the season of 1910? A Well—

Q Answer my question, whether it did cross your mind one way or the other? A I knew that the Yale and Harvard had never been operated by this company.

Q You can answer that question yes or no. A I think—

Q (Question read.) A I don't know as I can answer that yes or no.

Q Cannot answer that? A Not yes or no.

Q Can you answer it at all? A Yes, I can say this, that I know that the boats were never operated by the defendant company until 1910, and that the result of that operation was not profitable.

Q They were not operated by the defendant company in 1910, were they; they were operated by the Maine No. 2? A That is true. I know they weren't operated at all before that by anybody in behalf of the defendant company.

Q It did not occur to you that notwithstanding the fact that they had been operated successfully before the Maine No. 2 there wasn't anything funny in the fact that the Maine Company No. 2 operated them unprofitably?

Mr. Faulks. I object.

The Court. Strike it out.

Q Who did you consult with when you signed that operating agreement with the Pacific Navigation Company? A With Mr. Chase.

Q I suppose his judgment influenced you in that matter too, didn't it? A Oh, yes.

Q You never signed any paper or voted for any resolution which you had not consulted Mr. Chase on, did you? When I say paper I

mean any paper of a contractural nature, attending the Metropolitan? A Yes, that is correct.

Q So in other words you never did anything that Mr. Chase didn't want you to do, did you?

Mr. Faulks. I object to that, if your Honor please.

The Court. He can answer it.

A No, I never did.

Q And what you did do Chase at least wanted done, didn't he? A Yes, he approved of it.

Re-direct examination by Mr. Faulks.

Q When was this fire which occurred on the pier where the New York Agency accounts were kept? A It was during the summer of 1910, I think it was in July.

Q You have been asked about some evidence that you gave in New York.

Mr. English. No, pardon me. He said he testified in New York, but I didn't ask him anything about what it was.

Q You were asked with reference to having testified in a case pending in New York. Was that the trial of the indictment of the New Haven officials? A It was.

Q Did you also appear before the grand jury in that matter? A Yes, before two grand juries.

Q You were not a defendant, were you? A No.

Q Were you required to produce any of the books and records of this company? A Yes.

Q Before the grand jury? A Yes.

Q One or two grand juries? A Before two grand juries.

Q Did you do so under the subpoena of the Federal Court in New York? A Yes, I produced everything that I had.

Q Did you give evidence before the grand jury in that matter? A Yes.

Q By whom were you examined? A By Mr. Swacker.

Q Mr. Swacker, who is here as the counsel in this case? A Yes.

Q Were you examined with reference to the same matters about which you have been cross examined this morning? A I think only as to—

Mr. English. Well, now—

The Court. I exclude that.

Q Did you also testify on the trial of the indictment itself? A Yes.

Q By whom were you examined there? A By Mr. Osborne.

Q Was Mr. Swacker present, participating in the trial? A Oh, yes.

Re-cross examination by Mr. English.

Q I didn't ask you anything substantially that had been asked you at the criminal trial, did I?

The Court. I will strike that out. I am not going into the collateral matters as to what he was asked about at the criminal trial.

Mr. English. I would like to ask that one question.

The Court. I will exclude it.

Q You say you were not a defendant in the criminal trial; will you say who the defendants were? A There were a great many defendants; I know Mr. Robbins was one, if that is the answer you want.

Examined by Mr. Ward.

Q Was Mr. Chase a defendant? A No, sir.

Q Or the Pacific Navigation Company?

The Court. Well, we have had enough of that.

Mr. Ward. Just to avoid any mistaken inferences that might be drawn from the record.

The Court. I will strike it out. I do not care who the defendants were and I will strike it from the record.

Q (*By Mr. English.*) I suppose you consulted Mr. Robbins more or less since this case has been on, have you not? A Yes.

WARREN D. CHASE recalled.

Direct examination by Mr. Faulks.

Q Mr. Chase, I think you have already stated in answer to some of Mr. English's questions, when called as a witness by him, that you were admitted to the bar of Connecticut about in 1900, and practiced law there for some time? A I think I was admitted in 1903.

Q And in whose office did you study? A Edward D. Robbins'.

Q And were you a student in his office at the time you were admitted to the bar? A I was.

Q Did you continue with Mr. Robbins for some time after such admission? A Yes, I think until July 1st, 1906.

Q Where did Mr. Robbins have his office at that time? A 739 Main street, Hartford.

Q Was he a busy lawyer? A Exceedingly busy.

Mr. English. I object to that, away back in 1906.

Q How long did you remain with Mr. Robbins in Hartford? A Until July first, 1906.

Q Was it at that time that he went with the New Haven as counsel? A No, he didn't go until sometime after that.

Q You severed your relations with him at that time, however? A Yes.

Q And what did you do after that? A Went into private practice for myself.

Q Did you have any business ventures, as distinguished from practicing law? A Yes, I always have had, more or less.

Q And you devoted your time to your practice and to those business matters after leaving Mr. Robbins' office? A Yes.

Q Do you remember when it was that he went first with the New Haven as its counsel? A I don't know, but I think it was about the first of January, 1907.

Q And it was after that that you went with the New Haven as an assistant attorney? A Yes.

Q How long did you say you continued to occupy that position? A I was there from April, 1907, until sometime in the Fall of 1909, although I was not there actively after July first, 1909.

Q Did you have an opportunity while you occupied that position to ascertain whether or not Mr. Robbins gave all of his business time to the interests of the New Haven company, or whether he had any other clients? A I know that—

Mr. English. I object to that; it has been testified to two or three times that he had other clients.

The Court. I will admit it.

A I knew that he was engaged in some private practice, because I was associated with him in some of the cases outside.

Q (*By the Court.*) You would not assume that he was engaged, or could be engaged in buying up transportation lines that were operated in competition with the New Haven & Hartford? A No. The special cases I have in mind were cases in the Connecticut courts, litigation and things of that kind.

Q He had clients other than the New Haven during that period? A Yes.

Q How about yourself, did you devote all of your time to the railroad company's affairs while you were holding that position? A No, I did not.

Q Without going into details, what else were you doing during that period? A I was developing a manufacturing business, and I was an officer in several different corporations with which I had connections, and I also assisted Mr. Robbins in some of his outside practice.

Q As I understand from your previous testimony those matters took so much of your time that you finally decided it was necessary for you to sever your connection with the rail-

road company? A Yes, it eventually became necessary, I couldn't do justice to both.

Q After you did sever your connection with the railroad company did you continue to devote all of your time to these business matters and this legal practice of your own? A Yes.

Q When was it, as nearly as you can tell us, that you first had any talk with Mr. Robbins with reference to the Metropolitan Steamship Company of New Jersey? A I should think it was about six weeks before the purchase from the Assets Realization Company was consummated, five or six weeks.

Q (*By Mr. English.*) That would be when? A Some time in January, 1910.

Q Any way of fixing the date definitely? A No, I have not.

Q Was your communication with Mr. Robbins at that time had in writing or verbially? A Telephone.

Q What did he say? A He asked me to go down to see him in New Haven, had something he wanted to talk over with me.

Q Did you go? A I did.

Q Where did you meet him? A At his home.

Q Was it on that occasion that you had your first communication with him with reference to the matters which afterwards developed in the purchase of these securities? A Yes.

Q What did he say to you at that time? A Why, as nearly as I can recall he told me in essence that—

Mr. English. Do you think we ought to have the essence; ought we not to have the language?

Q Give the substance of the conversation as nearly as you can recollect it? A He told me that he had an opportunity to engage in an enterprise in which we could both make some money, and he told me that it was in connection with the Metropolitan Steamship of New Jersey; that he was too busy, that he could not attend to the details, and that he needed assistance, both in a business way and in a legal way, and he thought that I could handle matters in both capacities, and asked me if I would associate myself with him; he wanted to incorporate a separate company from the Metropolitan Steamship Company of New Jersey to take over the freight boats and Union Wharf, and also to acquire some of the securities of the Metropolitan Company of New Jersey, especialy the first mortgage bonds which he had to have in order to clear the title under the first mortgage to the freight boats and Union Wharf, and the proposition was that I should assist him in every way I could in the negotiations, and then if they were successful and the plan was consummated that I should have as a part of the return for my activities capital stock of the Metropolitan Steamship Company of New Jersey, the control of the Yale and Harvard going with them.

Q What was to be the other part of your compensation? A The other part of the compensation was covered by charges from time to time.

Q Charges for legal services that you might render? A Charges for legal services that I might render, so far as those services related to the matter of the freight boats and their connected securities.

Q Well, did you or not agree to his proposition? A I did.

Q Now, thereafter did you devote some considerable time to the matter before the purchase of the securities was consummated? A Yes, there was a great deal to be done, it took a long time to get negotiations to a point where there was an agreement, Mr. McKinnon was a pretty hard bargainer and the thing had to be taken up again and again.

Q Who did McKinnon represent in the negotiation? A McKinnon was the treasurer, I think, of the Metropolitan Steamship Company of New Jersey, and he also was an officer in the Assets Realization Company, and I think he was an officer in the Hudson Navigation Company, and also represented the liquidating agent of the Bank of North America, all of those interests having security holdings in the Metropolitan Steamship Company of New Jersey.

Q And he appeared as the representative of the owners of the securities which were covered by the negotiations? A Yes; he was trying to take care of them all, he said.

Q Were your negotiations looking toward a purchase of these securities had principally with Mr. McKinnon? A Yes, he was the principal one with whom the negotiations were carried on.

Q Who else was present? A The first time I ever came down I saw their attorney, Mr. Marshall, I think, and I also met Mr. Carrington, who was one of the officers, I think, both of the Metropolitan Steamship Company and of the Assets Realization Company, and finally Mr. Shaw who, I believe, was an officer in both

companies, and I think was the president of the Assets Realization Company.

Q Well, those negotiations finally culminated in the agreements which were entered into with Mr. Nicholson and Mr. Canfield for the purchase of the securities? A Well, they culminated not entirely in that way; that was one of the things, but the freight boats were transferred by the Metropolitan of New Jersey before that time, or arranged to be sold, and the Union Wharf contract was taken up before then, although the actual meeting covering it wasn't until, as I see by the records, the day before March fifth, on March fourth.

Q Messrs. Wing and Russell, it appears by the evidence in the case, had appeared in the sale of the freight boats, being the persons who offered a certain sum payable in the bonds of the company for such boats. Did you provide them? A I went to them.

Q At whose suggestion? A Why, I think it was at the suggestion of somebody in the Assets Realization Company.

Q (*By Mr. English.*) Are you sure? A Yes. The freight boat end of it was to a certain extent separate or different from the other, and they wanted to have a proposition before them so that they could act upon it from somebody, and I was sent at that time from their office up to the office of Wing & Russell, and I went up there and explained what was wanted, and they put in a proposition for, I think they stated on behalf of clients.

Q Is that the first time you had met Wing & Russell? A I think it was the first and last; I may have been up there twice, but I am not sure.

Q Their names were suggested for this purpose by someone in the Assets Realization Company? A Yes.

Q Now, as the negotiations proceeded, was there any arrangement made for the disposition also of the Union Wharf? A Yes; the Union Wharf was supposed to go with the freight boats, in order that there might be an operating freight line; the boats without wharves could not be operated.

Q And was there a contract made for the disposition of Union Wharf to Mr. Canfield? A Yes, there was.

Q Will you turn, please, to the directors' minutes and see if a copy of that contract is contained therein, and if so, state at which meeting, the date of the meeting at which its execution was authorized? A It appears in the records of the meeting of directors held on March fourth, and, of course I have looked this over before—

Q (*By Mr. English.*) What year are you speaking of? A March fourth, 1910—and this copy in here is a correct copy of the agreement which was executed at that time.

Q It bears date when? A March.

Q (*By Mr. English.*) Between whom? A Between the Metropolitan Steamship Company of New Jersey and Edward T. Canfield, and it bears date March 3, 1910.

Q And was authorized at a meeting of the board of directors of the Metropolitan Steamship Company of New Jersey held on March 4, 1910? A Yes.

Q Do you know whether or not that contract was assigned by Mr. Canfield to the Metropolitan of Maine No. 2? A Yes.

Q Do you know when that assignment was executed? A Why, I suppose it was executed then, March fifth, because the Metropolitan Steamship Company of Maine No. 2 took immediate possession of the freight boats and this wharf and went into operation of them.

Q It was executed at or about that time in any event? A Yes, at or about, of course I don't remember the incident.

Q And the Metropolitan of Maine No. 2 had possession of the wharf from and after that time? A Yes.

Q Now the minutes already in evidence show that in December, 1909, the Metropolitan Steamship Company had obligated itself to purchase from Calvin Austin, William T. Cobb and Abel I. Culver, receivers of the Metropolitan Steamship Company of Maine, certain liquid assets of the receivers up to the aggregate sum of two hundred and seventy-five thousand dollars, less the cash in the hands of the receivers at the time of the delivery of such assets; and also that the Metropolitan Steamship Company in connection with that tranaction was to give bond to the receivers to secure them for the payment of these assets, and that on such bond the Assets Realization Company was to be surety; do you know whether those liquid assets were taken over by the Metropolitan Steamship Company of Maine before March fifth? A The Metropolitan Steamship Company of Maine No. 2?

Q I mean by the Metropolitan of New Jersey, before March fifth? A Metropolitan Steamship Company of New Jersey had them in its hands when I first knew of the company.

Q Do you know whether or not some of these three hundred and seventy five thousand dollars of demand notes which Mr. Nicholson bought from the Assets Realization Company were demand notes which the Metropolitan of New Jersey had issued in payment for those liquid assets? A I think it appears in the record there that a note for about two hundred and seventeen thousand dollars was issued for that purpose, in payment of those assets.

Q To whom was that note given? A The Assets Realization Company, because they had guaranteed to the receivers of the old Metropolitan of Maine No. 1 the payment of the obligations of the Metropolitan Company of New Jersey.

Q Now, on March fifth were those liquid assets sold to the Metropolitan of Maine No. 2? A I think they were.

Q Do you know whether they were so sold at a price above what they had cost the Metropolitan Steamship Company of New Jersey? A The books indicate they were sold at a profit of a little over thirty thousand dollars.

Q What was the nature of those liquid assets? A Oh, there were traffic balances and various liquid cash items, the different accounts that an operating company or a going concern has in connection with its business, and office furniture and fixtures and things of that sort, and Union Wharf, personal items, that is items of personal property.

Q If you know what they were sold by the Metropolitan Steamship Company of New Jersey to the Metropolitan of Maine at that time please tell us? A Why, they had been used in connection with the operation of the freight

boats and were of course of chief value for that purpose, in connection with the operation of those freight boats, as a going business, and naturally would be sold to the purchaser of the boats, just as the Metropolitan of New Jersey purchased them from the receivers of the Metropolitan of Maine following the acquisition of the boats.

Q It naturally went with the boats? A Yes.

Q And the operation of the boats? A Yes.

Q Were those liquid assets sold before or after Mr. Nicholson became treasurer? A Why, from looking over the record and refreshing my recollection in that way, although I have no present recollection of it, I should say that they were sold before he became treasurer, because it would appear that some money was paid to the Metropolitan Steamship Company of New Jersey which apparently came from the Metropolitan Company of Maine.

Mr. English. If he hasn't any knowledge about that I move to strike it out.

A It is an impression that comes from refreshing my recollection from those minutes.

Mr. English. He hasn't got the books and he don't know. I move to strike it out.

The Court. Strike it out.

Q Have you any recollection on that subject?

The Court. At this time.

Q At this time, which will enable you to testify? A Nothing definite.

Q Mr. Nicholson was asked while he was on the stand this morning with reference to the

payment of these demand notes which he purchased in the aggregate sum of three hundred and seventy-five thousand dollars, and testified with reference to one of them, namely, a note for ninety-five thousand dollars having been paid in while he was treasurer of the company; do you know whether or not the other of those notes were paid during the same period? A I do not think they were paid while he was treasurer of the company.

Q Now, you told us the other day something about the incorporation of the New England Securities Company; as I recollect that is the company which subscribed for the capital stock of Maine No. 2? A Yes.

Q And why was the New England Securities incorporated, do you know? A Why, the New England Securities Company was incorporated for two purposes. In the first place, in order that there might be a corporation to subscribe for the capital stock of the Metropolitan of Maine No. 2, and in order that no individual might be required to borrow the money necessary for that purpose. And in the second place, because the Assets Realization Company, in connection with bonds which they had given in the purchase of the property of the Metropolitan Steamship Company of New Jersey, had assumed a liability and they wished to be indemnified against it; in other words wanted a bond given to them, and there wasn't any feasible way of giving the bond except with the *se*— the property purchased from the Metropolitan Steamship Company of New Jersey, and they were willing to take the bond of a company which owned the capital stock of the Metropolitan Steamship Company of Maine

No. 2, and they did, that was satisfactory to them, and that company in addition to subscribing to all the capital stock of the Metropolitan of Maine No. 2, executed and delivered to the Assets Realization Company a bond of indemnity for that purpose.

Q And it was for those two purposes, that is, to avoid personal subscription to the capital stock of Maine No. 2, and the liability that would exist by reason of the giving of this bond that was required by the Assets Realization Company, that this New England Securities was formed? A Yes.

Q You formed that company? A I had it formed.

Q Did Mr. Nicholson have anything to do with it? A No.

Q And that was the company that was organized, or at least after it had been organized, was carried on in Mr. Davis' office in New York? A Yes.

Q What was it that you said the other day with reference to the purchase of the capital stock of that company?

The Court. Well now, Mr. Faulks, what is said is on the record. He went into that very thoroughly.

Mr. Faulks. There was one matter that was not developed, your Honor, and I was trying to save a little time by putting my question in that way. I will withdraw it.

Q You testified the other day that Governor Hill sometime later than 1910 offered to buy the capital stock of the New England Securities Company? A No, the Metropolitan of Maine No. 2, from the New England Securities.

Q Offered to buy the capital stock of Maine No. 2 from the New England Securities Company, and to pay therefor a sum of between four and five thousand dollars in excess of the indebtedness of the New England Securities Company to the Billard Company. I want to know what disposition was made of the sum of between four and five thousand dollars that was thus received by the New England Securities Company? A Well, Mr. Davis received something between one and two thousand dollars, out of which I understand he paid something to Mr. McIntosh, and the rest he turned over to me.

Q And for what did you receive the remainder? A I did not understand the question.

Q And for what did you receive this remainder? A I kept it for my services in connection with the organization and handling of the New England Securities Company.

Q Did you also cause the Metropolitan of Maine No. 2 to be formed? A Yes.

Q Did Mr. Nicholson have any hand in that? A No.

Q Whom did you employ for that purpose? A Mr. Ward, of Portland, Maine.

Q Had you had any previous connection with him? A No.

Q At the time that these negotiations resulting in the purchase of the securities were under way, what plan did you and Mr. Robbins have for the operation thereafter of either the freight boats or the Yale and Harvard? A Is that the end of the question?

Q Yes. A We had no plan as far as the operation of the freight boats was concerned, except that Mr. Austin was to operate them.

My connection with the freight boat end ceased practically upon the organization of the company and the transfer of the properties. The passenger boats were to be operated by the Metropolitan of Maine No. 2 on a percentage basis, under which the Metropolitan of Maine No. 2 would assume all risks, and we should get as the owners of the boats what we considered a very favorable percentage of eighty-five per cent. of the net earnings from operation.

Q When you say "we" you mean the Metropolitan of New Jersey? A Yes.

Q On what run were the boats to be operated? A Between New York and Boston.

Q Was there any plan that you know of at that time of the sending of the Yale and Harvard out to the Pacific coast? A No, sir.

Q Why were they sent out there in the fall of 1910? A For the reasons that I explained the other day, that the company at the end of the operating season of 1910 was practically without funds or liquid assets, and it had no hope of improving its condition in the future on the run between New York and Boston, and under those circumstances it was impossible for it to borrow any funds, and not only was that the situation with reference to another season, but before another season could come around it had heavy obligations to meet, there were outstanding indebtedness at the time; but the principal items to be considered were the first mortgage bonds interest on January first, amounting to fifty thousand dollars, the expenses of laying up and maintaining the boats through the winter, and above everything the expense of overhauling the boats and prepar-

ing them for sea in the spring, which would amount to about one hundred and twenty-five thousand dollars, and besides that insurance money had to be provided to pay the premiums of somewhere between sixty and seventy thousand dollars, and the company neither had funds or any opportunity to get any, because there was no way by which it could improve its position and gradually repay any indebtedness that might be incurred, or even its existing indebtedness. And besides those conditions there were five hundred thousand of the two-year notes which were maturing a year later, and in 1912 a sinking fund payment of fifty thousand dollars a year was to begin under the first mortgage. That was the general situation.

Q Well, if the operating contract of Maine No. 2 was an advantageous contract, as you have said, why was the company in this financial situation in October, 1910? A Because on the run between New York and Boston there is practically a paying business of only two months, maybe stretched to three months at times, although that is uncertain, it is a summer proposition, and it is always a gamble, and the expenses on a run of that sort, where the boats have to be laid up in the winter time, are excessive, they run on the year round, while the earnings are subject to the conditions of the times and cannot be forecasted. The travel between New York and Boston by boat I believe had been decreasing from year to year, not only on that line of boats but on every line of boats until quite recently, due to the development I suppose of automobiles, and there wasn't any opportunity, with boats so

expensive as those to maintain and to operate, to make them pay for themselves.

Q Was it those reasons which led you to conclude in the fall of 1910 that it would be advisable to have the boats go out to the Pacific coast and operate there? A It was a fact that we had either got to make some kind of arrangement by which somebody would provide enough money for the company to meet its obligations in the future and gradually improve, or we would have to go into bankruptcy; that was the only thing that was offered, and it was an exceedingly favorable arrangement.

Q What did you know at that time as to the probable ability of the boats to make money on the Pacific coast if operated there? A I knew that the boats could be operated on the year as a whole on the Pacific coast. In other words, they could run continuously except when laid up in dry dock; I knew the weather conditions were different, I knew there was a great deal of regular travel between Frisco and Los Angeles which took considerable time, considering the distance, and that these boats could cover the same distance by water in very nearly the same time, only a few hours longer.

Q How did you have this familiarity with those conditions out there? A Well, I lived out there for about three years.

Q (*By Mr. English.*) When? A Between 1896 and 1899.

Q When did you first meet Captain Goodall? A As far as I can recall I first met Captain Goodall in the fall of 1910; I had never seen him on the Atlantic coast before then.

Q Well, if you had seen him at all before, how long before was it? A Oh, if I had seen him at all before it was between 1896 and 1899 when I was on the Pacific coast.

Q Now, you did have negotiations then in the fall of 1910 with Captain Goodall with reference to the boats going out there? A Captain Goodall and Mr. McGovern and Mr. Robbins.

Q And was it as a result of those negotiations that the operating agreement of October 10, 1910, under which the boats shortly thereafter left for the Pacific coast, was made? A Yes.

Q At the time you met Captain Goodall, the first time in the fall of 1910 had the Pacific Navigation Company been formed? A No.

Q Do you know by whom the money which was paid into the treasury of that company for its capital stock was subscribed? A I didn't know in what names it was subscribed; it was provided by Captain Goodall and his friends on the Pacific coast.

Q Was not provided by Mr. Robbins or yourself? A No.

Q Any of it provided in this part of the country, as far as you know? A No.

Q All on the Pacific coast? A All on the Pacific coast, as I understood it.

Q And whatever hand you had in the incorporation of that company was simply as a favor to Captain Goodall in the way of getting some attorney here to attend to it for him? A I simply procured an attorney.

Q And as an accommodation to him? A Yes.

Q (*By Mr. English.*) Did you get paid for that job? A No, I lost money on it.

Q You were responsible to the attorney for the payment of his charges? A I wasn't, no.

Q Now Mr. Chase, was it before or after the negotiations with Captain Goodall and Mr. McGovern for the sending of the boats out to the Pacific coast were consummated, or practically so, that the Pacific company was formed? A The Pacific company was formed—

The Court. He has gone with great detail into the formation of the Pacific Company and when it was formed and all about it. What is the use of repeating, unless you expect him to change his testimony that he gave under Mr. English's examination.

Mr. Faulks. No, I do not, and I think I am being reasonably brief with this witness. There are just a few things that may have been covered that I do not recollect but that I want to be sure are covered.

The Court. I remember he went into great detail as to the Pacific company, and the time and why it was formed, and as to the stock subscription. It is a long story.

Mr. Faulks. If your honor is sure of it I will not go into it any further.

Mr. English. I am not objecting to anything because I understood your Honor to say that counsel could practically cross examine his own witness, and that is why I am sitting silent.

Q I do want to ask Mr. Chase just a question about the Pacific company, and that is what expression, if any, there was on the part

of Captain Goodall for the formation of that company and for some participation in the benefits of the securities that were to be transfered to it; can you tell us about that? A Captain Goodall was unwilling to enter into an operating contract, and to take the boats out to the Pacific coast, and providing two hundred and fifty thousand dollars to the Pacific Navigation Company, unless in the event that the venture was successful he should share in the appreciation of the securities of the Metropolitan Steamship Company of New Jersey that were owned by Mr. Robbins, those being the two-year six per cent. notes and the ten-year notes, Mr. Robbins being the largest holder of the company in those notes, and in order to give him an interest in those securities the Pacific company was formed to take over the ten-year notes and the second mortgage bonds which in large part were exchanged for the two-year notes, and a portion of the capital stock went to the Pacific Navigation Company, and the rest of it went to Mr. Robbins, as I testified the other day upon the Court's inquiry.

Q Now, after the boats went out there did they continue on the run prescribed in the contract during the period of five years for which the contract was made? A They did.

Q When did that period expire? A On December 15, 1915.

Q Has the Pacific Navigation Company paid to the Metropolitan Steamship Company, or on its account, all of the moneys that accrued to it under that contract? A Yes; there are still outstanding two notes of twenty-five thousand dollars each, but there are off-sets I think to take care of it; the general account

has not yet been adjusted owing to slight differences, as were testified to here the other day.

Q Now, those differences, do they arise principally with regard to this five year period? A No, none of those differences relate to that; they relate to the operation of the boats on a month per month basis since the expiration of the five-year contract.

Q So that the five-year contract has been concluded and the settlements with reference to the obligations under that contract made or agreed upon? A Yes.

Q And the matters in controversy relate simply to matters arising during the month to month operation of the boats on the Pacific coast by the Pacific Navigation Company for account of the Metropolitan Steamship Company since December 15, 1915? A I think that is right.

Q Now, Mr. Chase, what was the result of the operation of the boats on the Pacific coast after the expiration of the five-year contract? A Well, the result was to vastly improve the financial position of the Metropolitan Steamship Company of New Jersey, I think to the extent of approxinmately a million dollars.

Q As a result of the operation under the five-year contract? A Yes, through the reduction of its indebtedness and increase in the value of its liquid assets.

Q Was the operation of the boats after the expiration of the five-year contract on the monthly basis as profitable to the Metropolitan Steamship Company? A No, they were not.

Q What was the basis on which they were operated by the Pacific Navigation Company for the Metropolitan Steamship Company during

that time, after the five-year contract? A They were being operated by the Pacific Navigation Company on the account of the Metropolitan Steamship Company of New Jersey under an agreement that the Pacific Navigation Company should receive as compensation for its services as agent, and for furnishing some general facilities in the way of ticket offices and agency arrangements, eleven per cent. of the gross earnings. That was a month to month arrangement, a tentative one.

Q And the business during that period was at the risk of the Metropolitan of New Jersey? A At the risk of the Metropolitan of New Jersey.

Q Well, under the other contract, the 5-year contract, the Metropolitan was assured a definite income, and the risk and expense of the business was that of the Pacific Navigation Company? A Yes; that was one of the essential things about the other operating contract, that all risk was upon the operating agent. In other words, the amount of income of a transportation company depends a great deal on the general business conditions of the country or the section in which the transportation line may be situated, and also an operating agent under such a contract has to assume all risk in connection with the lay-up of boats as the result of damages or strikes, and both of those things occurred during that five-year period.

Q Where under the five-year contract did the risk of accidents and collisions arise? A It is my impression that the Pacific Navigation Company assumed everything of that sort that was not covered by insurance.

Q (*By Mr. English.*) What time are you speaking of? A During the five-year period.

Mr. English. Objected to, because that is in evidence and speaks for itself.

The Court. Strike it out. The contract is in evidence and speaks for itself.

Q Where was the risk of accident and collision during the continuance of the month to month arrangement, which was made after the five-year contract expired? A With the Metropolitan Steamship Company of New Jersey.

Q Was the operation of that month to month arrangement sufficiently profitable to the Metropolitan to result in its desiring its continuance? A The Metropolitan of New Jersey much preferred to have an arrangement such as existed previously, under which the risk of operation during the periods and under the conditions should be upon the operating agent; and I know that Mr. Fernald appeared at the special stockholders' meeting last June and asked to have such—

Mr. English. You weren't there?

Q Wait a minute. We will come to that. A I think that is in the record anyhow.

Q I am asking about the desire of the company itself, as distinguished from anyone of its stockholders, to have that monthly arrangement continue, or whether they preferred to have a new arrangement made of the kind that had previously been in existence with the Pacific Navigation Company? A We preferred to have a new arrangement of the same sort, or if possible an improvement, although there was very little that could be hoped for over the old form.

Q Did you therefore undertake to secure such a new arrangement? A Yes.

Q When were negotiations to that end begun? A Oh, I think last spring, when the matter was first taken up. I cannot say definitely, but it lasted over several months.

Q (*By Mr. English.*) Did you conduct the negotiations? A I did not personally conduct the negotiations.

Q (*By the Court.*) Who did? A Mr. Robbins conducted the negotiations, going out there as their counsel to take them up.

Q (*By Mr. English.*) Robbins went out West to see about it? A Yes; I tried to get Captain Goodall to come on here but he wouldn't do it.

Q Were those negotiations first taken up with the Pacific Navigation Company? A Yes.

Q And was it hoped that some arrangement for another long term contract could be made with it, under which the risk of the business in the way heretofore described would be upon it rather than upon the Metropolitan? A Yes; they had been very satisfactory operating agents, and we preferred to have them continue.

The Court. The answer is yes; I will strike the rest out.

Q Were those negotiations successful? A They were not.

Q Why not? A Because the Pacific Navigation Company didn't want to enter into a new operating contract for a term of years under the old conditions.

Q While those negotiations were still in progress was a stockholders' meeting of the Metropolitan Steamship Company called for the

purpose of submitting the matter to the stockholders? A Yes.

Q Was a special meeting of the stockholders called for that purpose? A Yes.

Q And was such meeting held? A There was.

Q Did you direct Mr. Nicholson, or request Mr. Nicholson to see that all the stockholders of the company were notified of the call of this meeting? A I saw to the notification of those whose addresses we had, and I asked Mr. Nicholson to ascertain if he could the addresses of those that we did not have, and to see that personal service was made upon them in accordance with the by-laws.

Q And did you personally see that notice was mailed to all of the stockholders whose addresses had been given to the corporation, that appeared on the books? A Yes.

Q Was such notice, in fact, given in each case? A Yes.

Q How long before the meeting? A I couldn't tell you offhand; I should have to look at the certificate.

Q Well, have you any way of refreshing your recollection? A Yes, I have a certificate which I executed at the time of the meeting, in accordance with the by-laws, showing the proof; that is, constituting the proof.

Q Before you close your testimony I wish you would look at that and refresh your recollection and testify as to the time when those notices were given. How were they given, by mail or how? A By mail.

Q Now, which of the stockholders of the company, if any, attended in response to this call? A Mr. George A. Fernald of Boston attended, and Mr. Von Wessely, the president.

Q Were you there? A I was there with a proxy from the Chilmark company, and Mr. Higley, who was in court; I don't know whether he testified or not. Mr. B. G. Higley was also there, although he didn't have a proxy and was not a stockholder.

Q Did Mr. Higley say anything during the time that the meeting was being held, or while the stockholders were gathering for the meeting, as to why he was there or whom he represented?

Mr. English. Objected to because it appears he was not a stockholder and did not have a proxy.

The Court. I will exclude it.

Mr. Faulks. If your Honor please, I think that Mr. Higley stated that he was there as a representative.

The Court. Can you prove that by the hearsay testimony of an agent.

Q Did you know Mr. Higley before that meeting? A Yes.

Q How long had you known him? A Ever since 1896.

Q By whom had he been employed during that time? A I cannot say; I know by whom he was employed at the time, but not during all the intervening time.

Q By whom was he employed at the time of this meeting?

Mr. English. I object to that.

Q (*By the Court.*) Well, do you know who he was employed by? A Do I?

Q (*By the Court.*) Yes.

A Yes, he told me.

Q (*By the Court.*) Do you know from anything else except what he told you? A Only from general information.

Q (*By Mr. English.*) Had you ever been to his place of business and seen him at work? A I had been there on his invitation, but he was not there.

Mr. Faulks. I should suppose that if a man knows from general information that another man is employed by a certain person, and was invited by such employe to come to the office, that that would be some indication of the fact that he was in the employ of that man.

The Court. Well, I think it is inadmissible, but I will admit it for what it is worth.

A The Hudson Navigation Company.

Q And at the time of that meeting do you know whether or not Mr. C. W. Morse was connected with the Hudson Navigation Company?

Mr. English. Little attenuated, I think.

Mr. Faulks. Mr. C. W. Morse said he supplied the complainant in this case; he said that in so many words.

A Only from hearsay.

The Court. I am inclined to think that Mr. Morse said he was. I will assume that he was for the purpose of your next question.

Q What did Mr. Higley say at the time he appeared at this meeting?

The Court. I exclude that.

RECESS.

Q Mr. Chase, have you refreshed your recollection as to the date upon which you caused the notice of the special meeting of stockholders

called for June 12, 1916, to be mailed to each stockholder who had furnished his address to the company? A Yes, I have.

Q What was that date, please? A June first, 1916.

Q Did you cause such a notice to be mailed to every stockholder of the company with the exception of those whom were personally served with notice? A Yes.

Q Now I see by reference to the minutes of the special stockholders' meeting held on that day that the first business of the meeting was the representation and reading of a report of the treasurer dated May 31, 1916; was that a financial report? A It was; there was a balance sheet of the company as of that date.

Q And showed the financial condition as of that time? A It did.

Q And was that submitted to the stockholders? A It was, that was read.

Q Did you then make any statement with reference to the situation of the company's business, that is, with reference to the expiration of the five year contract with the Pacific Navigation Company, the manner in which the boats were then being operated, and the negotiations which were then under way for a new operating agreement on the Pacific coast?

Mr. English. If your Honor please, this is the defendants' witness and those are the defendants' minutes, and in the absence of some attack on the minutes don't they stand as to what took place at the meeting?

The Court. The answer called for is yes or no.

A I did.

Q Did you in the course of that statement say that when the meeting was called the directors had expected to have some definite proposition either from the Pacific company or the Pacific Navigation Company for the operation of the steamships?

Mr. English. I object to that.

The Court. I will exclude it.

Q In the course of that meeting did you state to the stockholders that the directors would be glad to receive suggestions as to the best arrangements to be made for the operation of the Yale and Harvard from any of the stockholders, whether present or not, and to give them full consideration?

Mr. English. I object.

The Court. I will exclude that on the ground that the minutes speak for themselves, unless there is something he said that is not in those minutes.

Q Did you make any statement to the stockholders at that time beyond what is contained in the minutes? A I think the minutes contain a fair outline of what I said.

Q Was any suggestion of any kind made by any of the stockholders present at that meeting, other than yourself, as to what would be the proper policy of the company in the future with reference to the operation of its boats?

Mr. English. I object to that.

The Court. He can answer that yes or no.

A Yes.

Q By whom was such statement made? A Mr. Fernald.

Q What did he say?

The Court. Does that appear in the minutes?

A I do not think it does.

Mr. English. Let us see the minutes.

Mr. Faulks. No, it does not, your Honor.

Mr. English. There are some remarks in there attributed to Mr. Fernald.

Mr. Faulks. I will bring that out; that was in reference to a ratification of the previous acts of the directors.

The Court. Is Mr. Fernald a party?

Mr. Faulks. He was at that time.

Mr. English. Oh, yes.

The Court. I will admit it.

A He said he thought the company ought not to undertake to run the boats itself and assume all the risks of operation, and that it would be far better to make some arangement similar to the one that had existed for the preceding five years, under which the operating agent would assume the risks of bad times and accidents and strikes and other contingencies that might interfere with the operation of the boats.

Q Now reference has been made by Mr. English to some protest that was filed at this meeting by Mr. Fernald. Have you produced that protest? A I gave it to Mr. English the other day when he asked for it.

Mr. English. It was marked 197 for identification.

Mr. Faulks. I have no objection to your offering it at this time if you want to.

Mr. English. All right, I will put it in and read it.

"To the Officers, Directors and Stockholders of the Metropolitan Steamship Company of New Jersey.

A resolution having been offered approving any and all past actions of the directors and officers of the company, the undersigned, a stockholder and bondholder of the Metropolitan Steamship Company, hereby protests against the passage of any such resolution and in particular protests against the actions of the officers and directors which have resulted in the suspension of the company's business on the Atlantic coast and the transfer of its sole remaining assets, the steamships Harvard and Yale, to the Pacific coast, and further protests against the surrender of the goodwill of the business of the company to the New Haven Railroad or the interests allied therewith and also to the alleged placing of second mortgage bonds against the steamships Harvard and Yale, without due and proper notice to the stockholders, and to any and all other actions of the directors which have resulted in causing the stock of the corporation to become practically worthless.

Jersey City, N. J., June 12, 1916.

Geo. A. Fernald & Co."

Marked Exhibit C. 197.

Q Was there any other protest than that made or filed at the meeting by any stockholder? A No, sir.

Q The minutes in evidence show that this stockholders' meeting was adjourned from time to time until Tuesday, August eighth, 1916, and at that time resulted in negotiations for the making of the further contract that was reported to the meeting, and that a proposed contract with the Pacific & Alaska Navigation Company was then submitted to the meeting. I show you contract dated July 31, 1916, between the Metropolitan Steamship Company and the Pacific Alaska Navigation Company providing for the operation of the steamships Yale and Harvard, and by the latter company as the agent of the former company, for a period beginning September first, 1916, and ask you whether or not that is the contract which was submitted to the stockholders at that meeting? A Yes, it is.

Q And who was it executed by? A Executed by Mr. Von Wessely as president of the Metropolitan Steamship Company, and myself as secretary, and by Mr. Alexander as president of the Pacific Alaska Navigation Company, and Mr. Rogers as secretary.

Q (*By Mr. English.*) What is the date of it? A July thirty-first is the date named in the contract.

Q (*By Mr. English.*) Was it signed at the time it was presented? A No.

Q Was it signed before or after the stockholders' meeting? A After the authority was given by the stockholders.

Mr. Faulks. That contract I will ask to have marked in evidence.

Marked Exhibit D. 38.

A I cannot recall when it was signed by the Pacific-Alaska.

Q But it was not signed in behalf of the Metropolitan Steamship Company until after the approval of the stockholders had been obtained at that meeting? A Yes.

Q This contract which is offered in evidence refers to an inventory of the furniture and other moveable effects on the steamships Yale and Harvard at the time the contract was made. I show you another paper beginning with the words: "This inventory of Equipment, constituting Exhibit A. of the contract just mentioned"; is that the inventory which is mentioned in the contract? A Yes, it is.

Q Was that executed at the same time? A I do not think it was ready at that time, I think it was executed a little afterwards, but it was intended to be part of it; that is my recollection, I may be faulty on it.

Q Is it the inventory that is called for by the contract? A Yes, it is.

Q And does that show the agreed value of these moveable articles as between the parties to the contract? A It does.

Q And what does it show the total of such agreed value to be?

Mr. English. Well, it speaks for itself I suppose.

The Court. It speaks for itself.

Mr. Faulks. Hadn't we better have it on the record, just a single figure.

Mr. English. Is it annexed to and made a part of the contract in evidence?

Mr. Faulks. It is made a part of it, it is not physically annexed.

A $214,054.80.

Q (*By the Court.*) What is that supposed to cover, the furniture on the ships? A Equipment of various sorts.

Mr. Faulks. I ask to have that marked in evidence.

Marked Exhibit D. 39.

Q Did the Pacific Alaska Navigation Company take over the operation of the Yale and Harvard as agents for the Metropolitan on September first? A Yes.

Q Under the terms of this contract? A Yes.

Q Is it still operating them under that arrangement? A It is.

Q Do you know whether or not it has made all of the payments to the Metropolitan Steamship Company that was called for? A It has with the exception of one item for stores, which was paid to the Pacific Navigation Company as they considered it our agent, should have come direct, but it is accounted for in our dealings with them.

Q Is the Pacific Alaska Navigation Company a new company? A No; that is, the line of boats is not new, and I think the company is not new.

Q Did you have anything to do with its incorporation? A No.

Q Is it an old established line out there? A Yes, it is an established line on the Pacific coast, known as the Admiral Line.

Q How long has it been operating on the Pacific coast? A Well, I can't tell you that, for a number of years.

Q Between what ports does it now operate the Yale and Harvard, under the provisions

of this agreement? A Between San Francisco, San Pedro, port of Los Angeles and San Diego.

Q Those are the same ports between which the boats were operated under the contract by the Pacific Navigation Company? A Yes.

Q (*By the Court.*) Is it permitted to operate the Yale and Harvard between any other ports? A Not without the consent of the Metropolitan.

Q Now Mr. Chase, after this contract was made did you have any communication with Mr. Fernald in regard to it? A I did.

Mr. English. What communication do you speak of; this protest?

Mr. English. No, after this contract was made.

Q Did you advise him of the contents of the contract? A I did in a general way.

Q Did you receive any word from him with reference to it? A I received a letter from him.

Q Have you that letter with you? A I have.

Q Please produce it. A (Produced.)

Q Is this the letter to which you refer? A Yes, it is.

Mr. Faulks. If your Honor please, I offer in evidence the letter produced by the witness, being a letter from George A. Fernald & Company to Warren D. Chase, Esquire, treasurer Metropolitan Steamship Company, 36 Pearl street, Hartford, Connecticut, dated September 11, 1916. I will read it into the record.

"Dear Sir:

Your letter of the 5th to the writer was duly received. We were pleased to note that the steamers Harvard and Yale had been placed in the hands of the Pacific Alaska Navigation Company under an operating contract to pay $30,000 per month and one-half of the surplus earnings in excess of that amount.

We thank you for the information and congratulate you on making what seems to us a favorable contract.

Yours very truly,

George A. Fernald & Co."

Marked Exhibit D. 40.

Q Mr. Chase, have you at any time been approached by or received a communication from any of the counsel in this case with reference to a possible purchase of your shares of stock in the Metropolitan Steamship Company? A I have.

Q Have you had both an interview and a letter on that subject? A Yes.

Q And which of such counsel, please? A Mr. Swacker.

Q I show you a letter dated September 27, 1916, signed Frank M. Swacker, and addressed to Warren D. Chase, Esquire, 36 Pearl street, Hartford, Connecticut. Is that the letter to which you refer? A Yes, that is one of them.

Q You have had no other one, have you? A I have, following the matter up.

Mr. Faulks. I offer that in evidence.

Mr. English. We object to this as entirely immaterial.

The Court. I will exclude it.

Mr. Faulks. I will ask to have it marked for identification.

Marked D. 41 for identification.

Q Mr. Chase, were you subponaed to produce any of the books and records of the Metropolitan Steamship Company of New Jersey before the grand jury in New York in the indictment proceedings had over there against officials of the New Haven Railroad Company? A I was.

Q Did you produce the books so far as it was in your power to do so? A I did.

Q Did you also appear before the grand jury? A I did.

Q Under subpoena? A Yes, the first time.

Q On any occasion when you were there was the writer of the letter which I have just referred to, namely, Frank M. Swacker, in the grand jury room?

Mr. English. Objected to as immaterial.

The Court. You may answer that.

A I think he was.

Q What was he doing there? A He, with other attorneys were conducting the investigation, as I now recollect it; that was some time ago.

Q Were you there more than once? A Only once that I now recall.

Q Prior to the beginning of the hearing in this present case, a couple of weeks ago, had all of the books and records which you thus produced before the grand jury in New York been returned to you? A No.

Q Had you endeavored to secure their return? A Mr. Swacker told me that he would return them upon request.

Q Have they been returned to you without any further request during the continuance of this hearing? A I wrote Mr. Swacker after I was subpoenaed here to have the books and papers returned, which he had not previously sent me, and they were returned last week, that is, a number of packages, and Mr. Swacker told me in court last week that he had returned them, but that was before I had received them.

Q Now in addition to this letter which you received from Mr. Swacker, and which has been marked D. 41 for identification, did you have any talk with him in reference to a desired purchase of your stock in the Metropolitan Steamship Company?

Mr. English. I object to that.

The Court. Yes or no.

A Yes.

Q Did he say in the course of that conversation that he represented a note holder, on whose behalf he desired to make the purchase?

Mr. English. I object.

The Court. I will sustain the objection and strike out the question.

Q What, if anything, did he say on that occasion as to whom he represented as a proposed purchaser of the stock?

Mr. English. I object.

The Court. Objection sustained.

Q Was this conversation which you had with Mr. Swacker before or after you appeared before the grand jury? A After.

Q Were you also a witness on the trial of the indictment case over there? A Yes.

Q Was it before or after that trial? A After.

Q Can you place the time of the conversation, bearing in mind that this letter is dated September 27, 1916? A I should say it was about the first of October.

Q Of last year? A Of 1916.

Q State what conversation you had with Mr. Swacker at that time?

Mr. English. Object to that.

The Court. Objection sustained.

Mr. Faulks. If your Honor please, it seems to me that I am entitled to show, and I offer to show in this case that Mr. Swacker last fall, stating that he represented a note holder in this company, desired to purchase the shares of stock which Mr. Chase owned in the company.

The Court. Suppose he did.

Mr. Faulks. I think it has a distinct and important bearing on the motives which are behind this suit, and I think that the matter of those motives is material and relevant.

The Court. I can very readily conceive how a note holder or a combination of note holders might, before they took any legal action to preserve their rights, endeavor to buy out Mr. Chase, and that failing to buy out Mr. Chase they then proceeded to protect themselves by any legal means which was within their power, and I do not propose to listen here to conversations which took place between counsel representing one side and the parties, it is collateral issue that I do not think has anything to do with the determination of the case.

Mr. Faulks. If your Honor please, I think that under the circustances it has a great deal to do with it. It is proven and not disputed that Mr. Swacker represented the Government in this New Haven indictment trial in New York, that he subpoenaed and compelled the production of this company's books, that he took part in the examination of the witnesses before the grand jury, and the later shows that thereafter, writing from the Federal Building in New York, he desires to make an appointment with Mr. Chase because he has a client who is desirous of acquiring Mr. Chase's stock, and I think that that all has an important bearing on the motives in back of this litigation. The situation is this. Here is a case in which there are at present three stockholders complainants; one of them, Miss Morse, according to the evidence, was supplied by her brother who is not a stockholder in this company, and who caused to be put in her name one hundred and thirty-four of the one hundred and thirty-seven shares of stock which the bill claims that she owns. Neither of the other complainants, appear at all. As would-be intervenors two gentlemen appear who admit that they had knowledge of the existence of the suit for years and of the purposes for which it was brought. I think that we are entitled to show that Mr. Swacker, who now appears as counsel for those would-be intervenors and examined them with reference to their ownership of these notes, has attempted to purchase this stock from Mr. Chase since the proceedings in New York

were had. It may be that his purpose was a laudable one, it may be that it was the one that your Honor suggests, but there is an opportunity to him or to his clients to show that. In the meantime I think that we are entitled to the benefit of this evidence. I therefore renew my offer of this letter addressed Room 528, Federal Building at New York, N. Y., September 27, 1916. Frank M. Swacker to Warren D. Chase. Esquire, 36 Pearl street, Hartford, Connecticut. I also renew my request that Mr. Chase be afforded an opportunity to state who Mr. Swacker told him he represented at the time of the conversation referred to.

The Court. I will adhere to my previous ruling.

Q You are the treasurer of the company at this time, are you not? A I am.

Q How long, approximately, have you held that position? A Since early in the summer of 1914.

Q And are you well acquainted with the company's present financial condition? A I am.

Q I call your attention to the last of the exhibits that was put in on Mr. Goodloe's examination, D. 35, and ask you whether or not that statement shows all of the liabilties of the company as of December 31, 1916?

Mr. English. I object to that. He did not make this and he did not have any official responsibilities for the books before 1914, and he did not actually keep the books

after that date. He cannot add anything to the testimony of the accountant.

The Court. I think Mr. English is right. What can he add? He may say that there are no other liabilities which as treasurer he knows of than these stated in this.

Mr. Faulks. He says that he is well acquainted with the present financial condition of the company, and I suppose it is to be gathered from the evidence in this case that he knows more about that financial condition than any other man. Now I can take up each item in turn and ask him what it is, and whether he knows of any other indebtedness of the company.

The Court. I will permit the question whether or not there are any liabilties of this company other than those statements stated on this statement that he has any knowledge of.

Q Well, I will ask him that question, and then I will take up and examine him about the statement. Answer that question. A With the exception of a few that have come in since January first in small amounts, I know of nothing else.

Q Are those simply for current expenses? A Yes.

Q Now referring to this same exhibit, are you familiar with the item of accounts payable? A I am.

Q Shown thereby as of December 31, 1916, to be $36,729.85? A I am.

Q Of what do they consist? A The largest item, which is in the neighborhood—

Mr. English. Is your Honor going to let this in?

The Court. No, I am not going to let it in. He may make a general statement, if he can, that he is familiar with each one of the items referred to on Exhibit D. 35, and that to his knowledge each one of the items is correct. I am not going to let him go into each one of them specifically.

Mr. Faulks. I suppose your Honor is interested in knowing what the financial condition of this company is, and whether any of its creditors are pressing for payment?

The Court. And I am assuming that the best evidence of that is the evidence of the accountant. This is merely cumulative.

Mr. Faulks. I offer to show by Mr. Chase that he has actual knowledge of all the finances of the company and of its financial condition as it exists today, and each of its items of indebtedness whether or not they are due; if not, when they will become due, and whether or not any of the creditors of the company are pressing it for payment at this time, or ever instituted action of any kind to secure payment.

Q (*By the Court.*) Mr. Chase, upon the liability side of this statement, are you familiar with each one of the items under current liabilities, notes payable, first mortgage five per cent. bonds, second mortgage six per cent. bonds and mortgage on Union Wharf? A There is no mortgage on Union Wharf now.

Q (*By the Court.*) Well, are you familiar with each one of those items? A I am familiar with them.

Q (*By the Court.*) And the situation as it existed on December 31, 1916? A As is shown here.

Q (*By the Court.*) I say you are familiar with that, and you know that of your own knowledge to be as shown in this statement? A Yes.

Q (*By the Court*). On December 31, 1916? A Yes.

Q (*By the Court.*) Are there any of those items which are past due? A All the ones that you mentioned?

Q (*By the Court.*) The ones appearing under the column December 31, 1916? A There is one item which is over due.

Q (*By the Court.*) Which is that? A There is due upon the second mortgage bonds interest which amounts, I think, to six or seven thousand dollars, which accrued on October tenth last and which has not yet been paid.

Q (*By the Court.*) And that is included in the figure two hundred and eighty-six thousand dollars? A I think it is included in the figure accrued interest.

Q (*By the Court.*) $12,995? A Yes.

Q (*By Mr. English.*) How much is it? A Six or seven thousand dollars; it is three per cent. on two hundred and eighty-six thousand dollars.

Q (*By the Court.*) Why has that not been paid? A We haven't yet made our adjustment with the Pacific Navigation Company, and pending that we weren't in possession of certain cash funds to enable us to pay anything that was not necessary to pay at the time; that is the only reason.

Q (*By the Court.*) Is there any one of the creditors of the company who were pressing for payment? A No, not at the present time.

Q (*By Mr. English.*) Those bonds themselves are due? A Yes, the bonds, as I testified the other day, were due October 10, 1915.

Q (*By Mr. English.*) $286,000? A $286,000, October tenth or eleventh.

Q (*By the Court.*) To refresh my recollection, who are those bonds held by now? A The Pacific company. I think I ought to say —I do not know whether it is permissible to or not—

Mr. English. Well, I object to it.

The Court. I will permit it.

A —that on the assets side of this statement it does not show all of the assets of the company, because when they made up the exhibit attached to the contract which was put into evidence here this afternoon had been mislaid and we couldn't get it to the accountants, and the assets would show a further gain of about one hundred thousand dollars which has come from additions and improvements since the boats have been on the Pacific coast, part of which have been paid off during the period in which the boats have been operated on a month to month basis, and part of which were made under the operating contract by the Pacific Navigation Company.

Q I notice on this statement, Mr. Chase, that the accounts receivable of the company aggregating $132,524.92 is the major part of that sum that is shown by the company's books to be due from the Pacific Navigation Company. A There is something over one hundred and thirty thousand of it is what has been found due to us.

Q (*By Mr. English.*) From whom? A From the Pacific Navigation Company.

Q Without attempting to state the exact amount, can you state within reasonable limits

the amounts to which that claim is admitted by the Pacific Navigation Company to be due and owing to this Metropolitan Steamship Company? A It is my recollection that there is no serious difference, except over the sum of about fifteen thousand dollars.

Q And the rest of it is admitted to be due? A Yes, substantially so; most of it, yes.

Q Has there ever been any default or delay in the payment of any sinking fund installment or of any interest on the first mortgage bonds? A Not since I have had knowledge of the company.

Q Has it ever been necessary for the company to borrow any money for either of those purposes since you have been connected with it? A Only as a temporary matter about a month ago. That loan is shown on there but it has since been repaid.

Q And is that because of the delay in the receipt of these expected moneys from the Pacific Navigation Company? A Yes.

Q Then do I understand you to say that to your knowledge this statement to which I have been directing your attention correctly states the liabilities of the company as of December 31, 1916, and its assets other than the Yale and Harvard, as of the same date, except that the assets were around substantially a hundred thousand dollars more of value by reason of the changes in the inventory? A Yes.

Q Have any of the stockholders of the company whose addresses did not appear on its books prior to the meeting of June, 1916, ever furnish you with any address? A No, I do not think so; I think they were all obtained by Nicholson at that time.

Q Well, had any addresses ever been sent in before by anybody, that you know of? A No.

Mr. English. It is immaterial, I think.

The Court. Let him answer.

A No, not that I know of.

Q During the time that the sinking fund arrangement under the second mortgage was in force, while you were treasurer of the company, did you countersign the checks for the payments that were made by Mr. Greening out of those moneys? A Yes.

Q Do you own all of the stock in the Chilmark company today yourself? A I do.

Q Do you hold it in trust for any person other than yourself? A No; that is my property.

Q Now at any time in any action or vote or otherwise which you have taken, did you, as an officer or stockholder of this company, knowingly act in the interest of the New Haven Railroad Company or of any of its subsidiary companies or affiliated corporations? A No, nor for anybody else except myself.

Q And the other stockholders of the Metropolitan company? A Yes, but I have been in controlling interest in that company.

Q Have you taken any such action or vote except as you believed it to be in the best interests of the Metropolitan company? A No.

Q So far as you know has anything which has ever been done by that company, been done for the purpose of suppressing competition in any kind of transportation? A No.

Q In anything that you did in connection with the acquisition of the stock or securities, or since that time, have you had any motive of limiting such competition?

Mr. English. I object to his motive.

The Court. I will permit it.

A Not at all.

Q Have you at any time in anything which you may have done in the negotiations for the acquisition of those securities or that stock, or since they were acquired, in any way endeavored to aid the New Haven Railroad or any of its interests? A No.

Examined by Mr. Ward.

Q In the negotiations which led up to the execution of the operating agreement with the Pacific Navigation Company, did you and Mr. Robbins strive to obtain the best terms possible for the Metropolitan Steamship Company? A We certainly did. The contract speaks for itself. I think.

Cross examination by Mr. English.

Q How much did you have to do with it as opposed to Mr. Robbins? A I didn't catch the last part of the question.

Q How much did you have to do with it as opposed to Mr. Robbins? A As opposed?

Q Yes.

The Court. As compared with Mr. Robbins.

A I should think it was about an even proposition.

Q Fifty-fifty on that? A He was interested in the securities and I was interested in the stock.

Q So you jointly endeavored to benefit this company by that contract? A I think we did.

Q You think you jointly endeavored, or you think you benefited the company? A I think

we benefited the company, and I think we jointly endeavored to.

Q This inventory which is here as D. 39, just in a general way that covers about everything except the hull of the steamers, does it not? A Oh, no.

Q It takes in such things as fire pail and fuel oil pump and steering engine and a turbine oil pump and main boilers and main engines, and all that kind of thing? A Extra equipment, as I understand it, which are apart from the ordinary things which form a part of the boat.

Q What is left after you take those things out except the hull? A I couldn't give you the details, but I will tell you this: when the boats went out there the inventory of this equipment was about one hundred and fifty to one hundred and seventy-five thousand dollars less than it is now.

Q You mean the valuation? A Yes.

Q The valuation? A Yes; most of those things have been added since.

Q When was this present inventory, D. 39, made? A It was made about the first of September, 1916.

Q Things have gone up since the ships went out in 1910, have they not? A Some things have.

Q You haven't sat down and compared the same values in this inventory as stated in the old one, have you? A No. This inventory here is the joint product—

Q Wait a minute. I didn't ask you that, I asked you if you sat down and compared the two, and you say no to that. A No; it is very difficult to make a comparison.

Q You do not know whether the hundred thousand dollars odd which you say this exceeds in figures over the other one is the real valuation or not, do you? A Yes, I do.

Q How do you know, if you did not compare it? A I know it from the fact that it had to be agreed to between the Pacific Alaska Navigation Company and ourselves, under the contract.

Q What did that have to do with it? A Just this: The operating contract under which the Pacific Alaska Navigation Company took those boats provided that at the end of the operating term they should return to the Metropolitan Steamship Company of New Jersey equipment upon the boats, or at least the value of these items, and they had a very powerful interest in seeing that those values were fairly and accurately stated, and they have initialed each sheet.

Q That had nothing to do with the situation back in 1910, did it? A Only to show that there was a good deal more equipment.

Q Did it? A Only in the respect I mentioned.

Q When you studied law with Mr. Robbins he was then practicing in a private capacity? A Yes.

Q He had a good deal of work for the New Haven Railroad Company at the time, did he not? A Some at times.

Q He was taken from his private practice to the general counselship of the New Haven? A Yes.

Q Shortly after you left his office? A A little while afterwards.

Q Then after you went into the employ of the New Haven yourself? A Yes, several months after.

Q I suppose in his department? A Yes.

Q When Mr. Robbins was still by himself and before he went to the New Haven a good deal of his time was devoted in the acquisition of various properties for the New Haven, was it not? A I should not say that; there were times when properties had to be acquired and there were various things to be done, but that wasn't the principal part of his business.

Q Now you were quite anxious, or rather you and Mr. Robbins when you conceived this idea of buying out this steamship line and making money on your own account, you were quite anxious to secure the Union Wharf? A That was a part of what had to be secured in order to operate the freight boats.

Q Did you operate the freight boats from the Union Wharf in fact? A I never had anything to do with the operation of the boats, because my interest in that end of it ceased after the property was turned over.

Q Don't you know as a matter of fact whoever operated the boats, or rather the Maine No. 2 which operated the boats did not use Union Wharf in connection with it? A No, I don't know that.

Q You would be surprised to have me tell you that now? A No, I have no idea whether it did or not.

Q Now it never occurred to you and Mr. Robbins in this money making proposition to operate the most lucrative end of this line, namely, the Yale and Harvard? A That has not appeared to be the most lucrative end of it.

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Q You always supposed the freight boats made more money than the Harvard and Yale when you investigated this proposition? A There was no—

Q Answer the question, whether you always supposed the time you took over this proposition that the freight boats made more money than the Harvard and Yale?

The Court. He can answer it in his own way.

A There was no definite information upon which to fix anything concerning previous earnings of the Yale and Harvard. On the other hand, the freight boats were being operated then and were being operated at a loss, but Mr. Robbins thought he could handle them in such a way as to show profit.

Q You did not take any stock in the statement of the directors that the Yale and Harvard always showed a handsome profit or been operated profitably? A I considered that ordinary puffing talk in connection with the negotiations.

Q Why did that puffing talk interest you. You were not buying the Harvard and Yale. A I didn't say that it interested me.

Q What bearing did it have; why should you consider it puffing talk or any other kind of talk if you were not negotiating for the Harvard and Yale? A I expected to have control of the Harvard and Yale through stock ownership, but I didn't think that there was a possibility of their becoming very heavy earners.

Q Mr. Robbins personally had no interest in the Harvard and Yale at all, in the part of the proposition he was buying? A He had no

interest except what he secured through the underlying evidence of indebtedness.

Q (*By The Court.*) If you thought that the statements of the directors were puffing talk with respect to the earnings of the Harvard and Yale, and if you knew that your stock ownership would only get you an interest in the surplus earnings of the Harvard and Yale, why did you go into the proposition at all? A I thought there was a possibility of development there and there would be an opportunity to earn money ultimately in connection with legal services, and of course there was some speculation too.

Q On the Atlantic Coast? A Yes; there was a possibility of perhaps selling those boats out afterwards; I saw what it was going to cost to overhaul those boats and get them ready for sea that year, and as to whether they could ever be operated profitably by or on behalf of the Metropolitan of New Jersey on that run.

Q Then between you and Mr. Robbins, practically you were going to take the Harvard and Yale and he was going to take the freight boats? A He was going to take the freight boats and Union Wharf, and the underlying evidence of indebtedness of the Metropolitan of New Jersey.

Q You were going to take the Harvard and Yale through the stock ownership? A I was going to take the stock ownership, which of course represented only the equity in the Harvard and Yale.

Q Well, the Harvard and Yale was all that was left after Robbins took what he wanted? A Practically all that was left after these negotiations went through.

Q Your interest in this company through stock ownership was the Harvard and Yale? A Yes.

Q Were you in a position to finance the operation of those great steamers? A No, sir.

Q But you took them on gaily just the same? A I knew that the Metropolitan of Maine, No. 2, would undertake to operate those boats upon a percentage basis.

Q What liquid assets were there that sold at a profit of thirty thousand dollars that you talked about? A The things to which I referred in answering Mr. Faulks' question this morning, traffic balances and office furniture and insurance payments and prepaid insurance.

Q Who did you sell those things to? A Those were sold to the Metropolitan of Maine, No. 2.

Q That is Mr. Robbins' company? A Yes.

Q You said that the three hundred and forty-seven thousand dollars of demand notes, except the ninety-five thousand, were not paid while Mr. Nicholson was treasurer? A I said I didn't think they were.

Q Do you think anything definitely now? A But I call your attention to the fact that there was not three hundred and forty-seven thousand.

Q What was the amount then? A I can't tell you, but they were not as much as that.

Q Quite a large sum of money? A There was some there, I think between two and three hundred thousand dollars besides the ninety-five thousand.

Q What do you think now as to when they were paid; while Nicholson was treasurer or not? A I cannot recall, but I do not think they were paid while Nicholson was treasurer.

Q Well, before he became treasurer? A I should think so.

Q Very shortly before? A If they were paid before he was treasurer they must have been paid very shortly before, because the company did not have much money until March fifth.

Q He became treasurer on March fifth? A Late in the afternoon of March fifth.

Q Were they paid off that morning? A If they were paid on that day they were paid before twelve o'clock.

Q Is that the fact? A I cannot recall it, but I started to say this morning that from looking over the data and refreshing my recollection that way I should assume they were.

Q You said you caused the Maine No. 2 to be formed. Why did you? A At the request of Mr. Robbins, as a part of the general plan into which we entered.

Q You knew that he was going to sell to it or transfer to it the freight boats and the Union Wharf? A Yes; that was a part of my work to see that they were transferred.

Q You knew that he was going to lease to it for the season of 1910, at least, the Harvard and Yale? A I knew they were going to take over the operation for that season on that percentage basis of eighty-five and fifteen.

Q You said Mr. Robbins had no plan for the operation of the freight boats except that Mr. Austin was going to operate them? A Well, that was his plan, that Mr. Austin was to.

Q Oh, that was his plan? A Yes.

Q So he asked Mr. Austin to become president of the Maine No. 2? A Yes.

Q Mr. Austin did not have any responsibility in the company, did he? A He was the operating head of that company, I suppose, although I didn't have anything to do with it.

Q Didn't know anything about the financial end of it? A I couldn't tell you.

Q Well, we can read his testimony on that, it is in the case. During the season of 1910 when the Maine No. 2 operated the Harvard and Yale, which you were interested in, and the freight boats which Mr. Robbins was interested in— A Yes.

Q —neither was successful? A I don't know anything about what happened to the freight boats; I am only familiar with the result of the operations of the passenger.

Q And that was not successful? A The earnings were not large enough to enable us to meet our obligations and fixed charges and expenses.

Q You were all the time afraid of this interest due on the first mortgage bonds, were you not? A Well, that is something which has got to be paid if the company keeps in operation.

Q And it was one of the things which worried you in this matter? A That was one of the things.

Q Couldn't the company raise money to pay that? A Not in the position in which it found itself at that time.

Q Didn't have any credit at that time at all? A It did not.

Q It managed to float a seven hundred and fifty thousand dollar second bond issue shortly thereafter, did it not? A Well, that was because arrangements had been made to take the boats out to the Pacific coast, and there was a

prospect of sufficient earnings to take care of its expenses and reduce its indebtedness.

Q Who made those arrangements? A Mr. Robbins and Mr. Goodall and myself and Mr. McGovern.

Q Why were you interested in that arrangement? A As the owner of the stock I had a very heavy interest in seeing that something was done.

Q Mr. Robbins had no interest in the Harvard and Yale, according to you; why was he bothering? A His interest was through the underlying evidence of indebtedness; he was the largest creditor of the company.

Q The second mortgages which he had taken on the ships? A He hadn't taken the second mortgages at that time.

Q But he expected to? A He had five hundred thousand of two-year notes and about seven hundred thousand of the ten-year notes, or practically half of the entire issue.

Q And some of those he changed into these second mortgage bonds?

The Court. Not at that time.

Q Thereafter he did? A Part of the five hundred thousand dollars of two-year notes were exchanged for second mortgage bonds on October tenth or eleventh, 1910.

Q Did Mr. Robbins consult you before he made this arrangement with Mr. Goodall? A He didn't make any arrangement with Mr. Goodall, it was joint.

Q Did he get your approval for the arrangement which he did make with Mr. Goodall? A It was worked out between all of us.

Q Well, did Robbins get your approval first, or did you get his first? A There wasn't any

question of one securing the approval of the other; we had to work out something which we could arrange.

Q It was entirely harmonious between you? A It was the only thing which offered, and was very satisfactory to everybody.

Q It was entirely harmonious between you? A It was on that point.

Q You said you were out on the Pacific coast from 1896 to 1899? A Yes.

Q Is that the time you got acquainted with traffic conditions on the coast? A I knew something about them at that time.

Q You were in college then? A Yes.

Q Leland Standford? A Yes.

Q And do you want the Vice-Chancellor to think that while you were pursuing your studies at college you were also studying traffic conditions with such minuteness that thereafter you could sit in New York and say whether it was to the advantage of two great steamships to go out to the coast and operate? A Oh, well, I knew something about the conditions.

Q Did you learn anything else about it except what you learned out there while in college? A I had a room-mate in college whose father was connected with the shipping business on the Pacific coast.

Q And what you didn't know he told you? A You might say so; although I was a student of transportation matters in college, took a special course on economics and transportation matters.

Q And it was that broad experience that enabled you, as a voter in the stock of this company, to conclude that it was highly advantageous that the Harvard and Yale go to the

Pacific coast? A Not at all, but it enabled me to form a judgment about conditions out there.

Q The Pacific Navigation Company still owes you money? A Yes.

Q Fifty thousand dollars, represented by notes, less some set-offs? A There are some set-offs.

Q And you do not know what they are? A Yes; various claims for moneys advanced, principally in making repairs, and accidents, for which we have been reimbursed by the insurance company, but the expenditures were first made by the Navigation company, the Pacific Navigation Company.

Q Is the Pacific Navigation Company doing any business now? A I don't know anything about it; I think it is preparing to wind up.

Q You do not know whether you will get your money or not, do you? A Yes, I do.

Q Got a bond? A No, but the cash is in the bank and a great deal more; Mr. Goodloe testified to that the other day, I think.

Q Goodloe? A Yes; he was out there, went out there as our representative.

Q The money was in the bank out there last summer? A Yes; they haven't been doing any business since.

Q You do not know whether they have drawn the money out or not?

The Court. Now, Mr. English.

Q It still owes you that one hundred and thirty thousand dollars? A That is what you were talking about. We hope to get it soon or the most of it.

Q How long have they owed you that money? A That is the balance which was found due by

the accountants after they turned the boats over to the Pacific Alaska Navigation Company.

Q When was that? A On August thirty-first.

Q 1916? A Yes.

Q Who was dissatisfied with the operation of the Harvard and Yale by the Pacific Navigation Company after the lease expired? A Who was dissatisfied?

Q Yes. A I was dissatisfied.

Q When was it Mr. Robbins went out there in the interest of this thing? A I think it was in June, possibly in May.

Q Of 1916? A I think in June.

Q Of 1916? A Yes.

Q And was one of the results of his visit this ultimate agreement which you made with the Pacific Alaska Navigation Company? A The working out of that was done while he was there together with Captain Goodall and the officers of the Pacific Alaska Navigation Company.

Q So that was the result of his trip; that was one result of his trip? A As a result of his trip that was submitted to the company.

Q Did he bring it back with him? A I think he sent it.

Q It was drawn up out there? A It was drawn up out there.

Q And signed by the Alaska people out there? A It was signed by them, yes.

Q So when you first saw it it was all drawn up and signed by the party of the second part? A It was submitted as a proposition by them, whether it was actually signed then I cannot say.

Q Was it signed here in the East? A It was signed by the Metropolitan Steamship Company.

Q I understand that. I am talking about the Pacific Alaska. A I think it was signed out there.

Q Did you ever personally meet Mr. Alexander, the president of the Pacific Alaska? A No, I never did.

Q Or Mr. Rogers, the secretary? A No.

Q They were out on the Pacific coast? A Yes.

Q The person they dealt with was Mr. Robbins? A Mr. Robbins and Captain Goodall I suppose.

Q The person they dealt with on behalf of the Metropolitan Steamship Company was Mr. Robbins? A Oh, Mr. Robbins was representing us out there, yes.

Q He went out the year before, too, didn't he? A I couldn't say, he may have; he has large ranch lands in Kansas.

Q And of course it is no trip from Kansas to the Pacific coast? A Not so bad as from here, you have got over the worst part of it.

Q (*By the Court.*) While we are on that contract. Comparing the contract made with the Pacific Navigation Company and the contract made with the Pacific Alaska Company, how do they compare as to terms, favorable or unfavorable to the Metropolitan Steamship Company? A I think they are more favorable. Of course it will depend in part upon the result of the operations; the Pacific Navigation Company was bound to pay four hundred thousand dollars a year, approximately, after the first year, when it was about fifty thousand dollars

less, and anything that they made above that they were to have. Under this contract the minimum guaranteed by the Pacific Alaska Navigation Company is three hundred and sixty thousand dollars a year, and above that, after ten per cent. has been taken out for their services as operating agents, the balance is to be divided between the Metropolitan Steamship Company of New Jersey and the Pacific Alaska Navigation Company, and I understand that the indications are that the earnings will come up to the amount; so that we will net the first year as much as we got from the Pacific Navigation Company, and we hope for better things afterwards.

Q (*By Mr. Faulks.*) You do not state on what basis the excess earnings over the three hundred and sixty thousand dollars was to be divided; you stated the deduction of ten per cent. A Fifty-fifty, after the ten per cent. is deducted.

Q (*By the Court.*) Otherwise are the terms practically alike? A Otherwise they are very similar, except for the improvement of some details which we learned in our experience with the Pacific Navigation Company. Also there are some conditions in there with respect to competitive boats, because this company has other boats, so as to make certain that they would not use them at a disadvantage in comparison with the Yale and Harvard, and as a result of that we expect heavier earnings because since that time the Pacific Alaska Company or its people have come into possession of other boats running south of San Francisco, and when those boats used to run some times on the same days with the Yale and Harvard

now the thing is so arranged that one boat goes every day, and it is a greater accommodation to the people and results in heavier travel and larger earnings.

Q (*By Mr. Ward.*) In that connection, under the agreement with the Pacific Navigation Company if the boats were laid up because of an accident so that the earnings were suspended, who stood that loss? A The Pacific Navigation Company.

Q (*By Mr. Ward.*) Under this present contract if the boats were laid up for a certain period is it not a fact that the guaranteed earnings payable to you are decreased? A Yes. If a boat is laid up for as long as eight months, owing to an accident, why then the guaranteed payments are reduced pro rata under the new contract.

Q (*By the Court.*) I wanted to get some evidence of what the difference was. A That would be a serious injury that would lay boats up for eight months; ordinary things like strikes or accidents wouldn't lay a boat up for that length of time. Of course the advantage is as I pointed out in connection with the other contract, that the risk is practically all assumed by those people, risks of poor times, bad business, accidents and strikes and other contingencies.

Q Do you know whether this contract was dictated by Mr. Robbins or by the attorneys of the Pacific Alaska? A I do not think it was dictated by either, I think it was worked out by both.

Q Somebody had to dictate it.

Mr. Faulks. Is that a fair inference, your Honor?

Q (*By the Court.*) Do you know? A I only know that I have been told that it was very difficult to get an agreement upon many of the points.

Q (*By the Court.*) You do not know who dictated it? A No, I do not; I think it was dictated a good many times before it was in final shape.

Q You say Captain Goodall had a hand in this? A I think he informed and advised Mr. Robbins about many things.

Q His company was through? A And that was just the reason why he could.

Q Your Metropolitan Steamship Company has taken him on now as official inspector? A We wanted somebody to look out for those boats out there, yes.

Q That was arranged by Mr. Robbins while he was out there? A It was taken up at directors' meeting at which he was appointed vice-president after Mr. Robbins had talked with Captain Goodall about it.

Q So the directors made formal ratification of the arrangements which Mr. Robbins had made? A It hadn't been concluded at that time, because I did not think it was wise to have him enter into any duties of that sort until after we had made a settlement with him, and I never notified him for a long time.

Q He is acting out there for you now? A I think he is.

Q You know it, don't you? A He is supposed to be.

Q Mr. Hough, who had previously acted in that capacity is now out? A Mr. Hough didn't act for us, he acted for the American Trust Company.

Q Nobody else acted except Hough, did they? A I think not at that time; Hough and the underwriters.

Q I suppose that the clauses in this contract with the Alaska Navigation Company which were favorable, or what you regarded as favorable to the Metropolitan, were put in there by Mr. Robbins, were they not? A Most of them were, in essential respects, similar to those which were in the previous contract.

Q The things which are provided here to be in the control of the Metropolitan were put in by him, weren't they? A Yes; I think he did exceedingly good work.

Q We will assume he made a good job of it, and he is the source of those clauses.

Mr. Faulks. Is that important? I object to it.

The Court. What is the next question?

Q The clauses in here which put whatever power they do in the hands of the Metropolitan are at the suggestion of Mr. Robbins, which you regarded as an extremely good job?

Mr. Faulks. I object to that as immaterial and irrelevant.

The Court. I will admit it.

A As far as I know he was looking out for their interests.

Q Including the clause that those ships would operate nowhere else except the Pacific coast, except by permission of the Metropolitan? A That was on account of the insurance in the preceding contract.

Q (*By the Court.*) Is that one of the clauses put in by Mr. Robbins to your knowledge, or

do you know anything about it? A I know that the matter came up at the time when it was being worked out, and it was a question of insurance, because we had to stand the insurance; that is one of the expenses which the operating company bears.

Q Of course you couldn't pay a higher premium or a lower premium and have the insurance changed? A We could have the insurance changed, but it would make a difference in our contract.

Q You had your conversation with Mr. Swacker in October, 1916? A I think it was in October, I do not remember the exact date.

Q This bill was filled in 1912? A Yes, I think December, 1912.

Q When did you go before the grand jury in New York? A I think it was in the fall of 1914, I do not remember the exact date.

Q And when was the trial of the New Haven directors? A When I appeared it was December, 1915; I think it lasted for some time.

Q You testified in the trial? A Yes.

Q You also testified down in Washington, did you not, before the Interstate Commerce Commission? A Yes.

Q Now you undertook to give the Court some testimony on the accuracy of this D. 35? A December thirty-first.

Q What do you know about the situation on November 15, 1909? A I do not know anything about the situation at that time; I only testified to the balance sheet as of December 31, 1916.

Q You do not undertake to go back of that in your testimony?

Mr. Faulks. He wasn't asked.

Mr. English. Well, I understood he was asked.

Mr. Faulks. I do not think he ought to put the witness in the position of having testified if he did not.

The Court. No, he did not testify; the witness merely testified as to the figures under the column headed December 31, 1916.

Q That is what your testimony was limited to on this D. 35? A Yes.

Q So you cannot give us any light on the previous statements here? A Not as much as I can upon things in the immediate present.

Q Can you give us any light on anything back of that date? A If you ask questions I might be able to tell you.

Q I think we would all like to know how that two hundred and sixty-six thousand odd dollars which was in the bank at the time Mr. Nicholson took over the company as treasurer on March 5, 1909, got away? A I would be very glad to tell you what I think.

Q I do not care what you think.

The Court. You examined him on that I think in great detail.

Q Yes, only I thought from what he said he had a new light. A I got some inferences, what I think.

Q Well, we can all think about that. You think the financial condition of this company has improved since you became in control, do you? A I know it has.

Q Nevertheless it has a second bond issue of two hundred and eighty-six thousand dollars which it did not have before? A Yes, but it

has no five hundred thousand two-year six per cent. notes.

Q It exchanged them for second bonds, didn't it? A In part, yes.

Q When you get rid of them you still got at least two hundred and fifty thousand of new debt it didn't have when it was transferred to the Assets company? A No, almost two hundred and fifty thousand dollars less on that item, and on a reduction in the outstanding first mortgage bonds much more.

Q We will assume that the reduction of the first mortgage bonds had gone on just the same; it has a new indebtedness it did not have in the beginning of at least two hundred and fifty thousand dollars of second mortgage bonds, has it not? A I do not think that is a fair way to put it; it has less indebtedness.

Q Whether or not it has, it is the fact, is it not?

Mr. Faulks. No, it is not the fact.

The Court. I think the figures speak for themselves.

Q When the control of this company came into your hands, as you testified, March, 1910, it did not have any second mortgage bonds outstanding? A No, it did not.

Q And that was put on after your management? A Yes.

Q Now you have testified about this meeting in the summer of 1916 when you voted for the ratification of the lease with the Pacific Alaska Navigation Company. There are fifteen thousand shares of stock of this company? A Yes.

Q Of which you controlled fourteen thousand three hundred and seventy, did you not? A Something like that.

Q So the objecting stockholders, if there were any, could not have prevented the thing anyway, could they?

The Court. I exclude that on my own motion.

Q Then Mr. Fernald, I take it from what you state that he was as to the future trying to make the best of a bad business, was he not? A He didn't so state.

Q He didn't so state. I do not suppose you even got that impression, did you? A I got a contrary impression from what he told me.

Q He certainly did not acquiesce in what had gone before, in view of his letter of protest? A He stated that he might if he had a chance to read the record, but as he hadn't a chance to he was going to file a protest to protect himself.

Q He did file a protest, did he not? A That one that was prepared.

Q You say this Metropolitan company never had to borrow money except just lately to pay that first mortgage interest? A I said that since the boats went out to the Pacific coast, as far as I could recall, it hadn't borrowed anything until recently.

Q Where did it borrow it from recently? A From two places.

Q Tell us. A Between twenty-five and thirty thousand borrowed from the Pacific company, and thirty thousand which was borrowed from the Connecticut Trust & Safe Deposit Company in Hartford, and which has been repaid.

Q Lately it borrowed money from the Pacific company? A Yes, temporarily.

Q Mr. Robbins controls that company? A Mr. Robbins and the Pacific Navigation Company.

Q Who did it borrow money from in December, 1914, to pay some interest to make up the difference in the first mortgage interest? A I don't think it borrowed any money.

Q Now let me call your attention to Exhibit 192, check stub book, and see if you remember this transaction: "Nicholson advised by 'phone 12.13 that Martinsen had from other funds in his hands sent American Trust Co. the difference to make up $50,000 due January first on interest on first mortgage bonds." Where did Martinsen get other funds in his hands if they did not come out of the sinking fund? A There were funds which were constantly coming into his hands in an irregular way, and the principal items were from payments by insurance companies, and they amounted in the course of a year to considerable; whether those were the funds which he had at that time I do not know but I should assume so.

Q Where was the company in the habit of borrowing money from? A It wasn't in the habit of borrowing.

Q You were not treasurer in those days, were you? A No, sir.

Q You do not know where this money came from? A I have given you my opinion, because I know the company had funds from outside constantly.

Q You said they lately borrowed some money also from the Connecticut Trust Company? A Connecticut Trust & Safe Deposit Company.

Q How long ago was that? A That was on December twelfth.

Q Of this past year? A 1916.

Q Who arranged that loan? A I did.

Q Are you connected with that bank? A No sir; I use it in connection with some of my business matters.

Q Is Mr. Robbins connected with that bank? A No.

Q Did he have anything to do with helping you get that loan? A No, he had nothing whatever to do with it, in the negotiations.

Q He had nothing to do with the negotiations; is that what you say? A Yes; I handled it entirely.

Q What did he have to do with it; something to do with the security? A Well, he and I both endorsed the note at the request of the Connecticut Trust.

Q In other words, if it hadn't been for Mr. Robbins you couldn't have made that loan? A I think I could.

Q But you didn't, did you? A I complied with the request.

Q I notice that the question to which you answered yes, with reference to any suppression of competition was rather carefully worded, and was like this: "So far as you know nothing was done"; you didn't know, did you?

Mr. Faulks. Did I ask him anything beyond his knowledge, your Honor?

The Court. I think I overruled every question you tried to ask him on that.

Mr. Faulks. Yes, I think they were all excluded.

Mr. English. The question was "So far as you know."

The Court. Well, that is my fault and not Mr. Faulks' fault. You are attributing to counsel that the question was carefully framed; it was framed in accordance with my suggestion.

Q You answered as far as your knowledge went?

The Court. If you want to open the door you are welcome to.

Mr. English. No.

Q You answered as far as your knowledge went, did you not? A I did.

Q And I judge from the answer you gave to the question you have a limited knowledge? A I do not consider that my knowledge is very limited.

Q I mean on the question of suppression of competition? A Not so far as the company which I controlled is concerned, or so far as my acts were concerned.

Q How often have you met Mr. Robbins in connection with this general business since the early winter of 1910? A Oh, I don't know.

Q Pretty frequently? A Irregular intervals.

Q And consulted with him more or less? A Oh, occasionally, as matters would come up.

Q He has taken a great interest in the progress of this case? A Yes; he has been consulted in this case.

Q He has attended many of the hearings we had before the commissioner to take testimony? A I don't know; he was present at the only one that I attended.

Q What was your answer? A I say he was present at the only one that I attended.

Q You do not know whether he was present at others or not? A No, I do not.

Q You attended one in New Haven, was it? A New Haven.

Q We had two sessions in New Haven, were you at both of them? A I think not.

Q Not at the second one? A I do not think I was.

Q Mr. Robbins does not undertake to act as counsel for the defendants in this case, does he? A I don't get your question.

Q Mr. Robbins has not undertaken to act as counsel for the defendants in this case, has he? A No; Mr. Faulks and Mr. Nicholson are counsel.

Q Did you consult with him as to retaining counsel when this case was brought? A I think I talked with him before New Jersey counsel was retained; I can't recall it now.

Q I suppose you concurred in that as in everything else? A I knew that as a lawyer he had a pretty good knowledge of counsel in New Jersey and I didn't have. I retained Mr. Nicholson.

Q Why did you pick out the name of the Metropolitan Steamship Company when you organized the Maine No. 2 for Mr. Robbins? A Because I thought it would be well to continue the name under which the line had been operated; I did that as a business man, not as a lawyer.

Q That was your business judgment? A Yes.

Q To get the benefit of that good will, I suppose? A There hadn't been very much good will.

Q I was going to add, if it had any? A If it had any.

Q How long did the negotiations last which resulted in the making of the arrangements with the Pacific Navigation Company in October of 1910? A It is my recollection that matters were taken up early in September.

Q And concluded in October? A They were concluded in October.

Q And that general series of negotiations involved the incorporation of the Pacific Navigation Company, the incorporation of the Pacific company, the floating of the second mortgage bonds, and the drawing up and execution of the agreement with the Pacific Navigation Company, did it not? A Those things were all done about that time.

Q And in that matter Captain Goodall was on one side and you and Mr. Robbins on the other? A Captain Goodall and Mr. McGovern.

Q And you and Mr. Robbins on the other side? A Yes.

Q And Mr. Robbins participated in that all the way through? A He participated in the conferences and in the second mortgage bonds, and in the operating contract.

Q His freight boats were not involved in that in any respect? A No.

Q Or his Union Wharf? A No.

Q Have you seen the Harvard and Yale since they have gone out to the Pacific coast? A No, I have not.

Q Any knowledge you have of them as to whether they are better or worse comes from somebody else? A Comes from the reports.

Q (*By the Court.*) Do you carry sufficient insurance on the Harvard and Yale so that if

there was a total loss of both vessels the Metropolitan would be in a situation to pay all its debts? A Including the ten-year notes, you mean?

Q (*By the Court.*) Yes. A No, but we carry all we can get. The insurance field of the world is limited, that is, the underwriters are not willing to carry only about a certain quantity upon one boat, and we have crowded it up as far as we could without driving the premium to such a height that it would be excessive. We have at the present time about one million dollars of ordinary insurance on each boat, and we have such as we were able to get, about two hundred thousand dollars more, for the benefit of the second mortgage bondholders; we expected originally to be able to get seven hundred and fifty thousand to protect the second mortgage bonds, but we could not obtain it.

Q (*By the Court.*) So that if there was a total loss of both vessels there would not be a sufficient fund realized to pay the debts of the company, including its first mortgage bonds? A Well, including its ten-year notes.

Q (*By the Court.*) To what extent? A Well, the outstanding first mortgage bonds at the present time are a little under one million six hundred thousand dollars, and there are two hundred and eighty-six thousand of second mortgage bonds to bring it up to about one million eight hundred and seventy-five thousand dollars, and the liquid assets are sufficient to take care, I think, of everything else except the ten-year notes; so that there would be a margin of between three and four hundred thousand dollars of insurance above that for the ten-year notes.

Q (*By the Court.*) And they amount to how much? A One million and a half, but we tried to get more.

Q (*By the Court.*) And of course in case of a loss to one vessel the margin would be just one-half of that? A Yes.

Q (*By the Court.*) When did Mr. Robbins cease to be general counsel for the New York, New Haven & Hartford, do you know? A I knew at the time.

Q (*By the Court.*) Approximately; I do not mean any definite date? A I should think it was in the fall of 1913, it was in the fall of some year, and I am not certain, but I think it was about then, I think that was when it was, about three years ago.

Q (*By the Court.*) I may have asked you this question before. Did you ever hear where the Billard company got the one million five hundred thousand dollars it loaned? A Only as I heard it in connection with litigation since.

Q (*By the Court.*) Have you testified to that already? A I think I have been asked the question, yes.

Q (*By the Court.*) Tell me again. A What I said was that I had no recollection of ever having known anything about where the Billard company got its money; I suppose it supplied it from its own funds.

Q You ought not to say what you suppose.

The Court. You have no knowledge as to where the Billard company got the one million, five hundred thousand dollars, unless it got it from its own funds? A No.

Q (*By the Court.*) You never heard how it got it? A No.

Q When the lease with the Pacific Navigation Company expired there was an interregnum there before you had any new lease? A There was a time during which the boats were operated for our account.

Q That was simply a tentative arrangement? A Yes.

Q You were free to operate them there or elsewhere if you wanted to? A We were free to make other arrangements; that was the month to month arrangement.

Q You weren't tied up by any long time lease? A No.

Q You were free to operate in any part of the world you wanted to, as far as the legal situation was concerned? A Yes.

Q As far as the legal situation was concerned you were in a position, if you wanted to, to bring them back to the Eastern coast? A From a legal standpoint, yes.

Q That is what I mean. A Yes.

Q Are you sure that Mr. Robbins quit in the New Haven as general counsel in 1913? Wasn't it 1914? A Well, it is easy to ascertain.

The Court. Cannot we agree on the date?

Mr. Faulks. I will endeavor to ascertain when it was and have it agreed on.

The Court. Somebody must know when that date is.

Mr. Faulks. I will get the information.

Re-direct examination by Mr. Faulks.

Q You said a moment ago in answer to one of the Vice Chancellor's questions that the amount of the outstanding ten-year notes was a million and a half. It is really about seventy-two thousand dollars less than that sum, is it

not? A Yes, that is true, I stand corrected, but the original issue was a million and a half and I had that in mind.

Q Has substantially the same amount of insurance been kept on the boats from the time that you became connected with the company at least? A Yes, except for an increase.

Q It has been increased somewhat? A Yes.

Q What is this insurance on premiums that was testified to as being in existence by Mr. Leighton while he was here? A I understand that that is to indemnify the company for the money that it has paid in the way of insurance premiums if the boats should be lost before those premiums were entirely earned. It is quite a proposition to understand in detail one of those marine insurance policies, but it is my understanding that that is the purpose of the insurance.

Q (*By the Court.*) There is no rebate of insurance in case of loss before the insurance is earned? A No, that is my understanding.

Q (*By the Court.*) So that you insure against the non-earning of the premiums you pay? A Yes.

Q (*By the Court.*) You pay for a rebate, that is what you do? A Yes, that is what it amounts to.

Q Do you know how the rates charged for insurance on the Yale and Harvard compare with the rates charged for insurance on other boats now sailing on the Californian coast? A I couldn't give you any details, but I know that our brokers, Paige & Company, have had considerable trouble in holding down the premium to the present rate in the last few years.

Warren D. Chase, re-direct.

Q Have you any knowledge as to whether or not the rate of premium charged for insurance on the Yale and Harvard is not in fact less than the average rate on the other boats operating in the same territory? A I have understood that the comparison was favorable to us, but I do not know anything as to details.

Examined by Mr. Ward.

Q Does this inventory Exhibit D. 39 as a matter of fact cover the fire pump or the steering engine or the main engines, or items of that character? A I don't think that it does; I am not familiar with all the details of that.

Q Can you say from looking at it? I call your attention to the particular item about which I was speaking. A It appears to. You asked about the fire pump and the steering engine and the main engines?

Q Yes. Look at it carefully. I do not want to guide you, and on the other hand I do not want the record to speak misleadingly as to the character of it. A No, it does not; the headings indicate that it does, but those are only headings to direct the attention to items of supplies connected with these engines, steering engine and fire pump. I supposed that was so.

The Court. I had supposed so also. Oil boilers complete; that does not mean oil burning engines, it means supplies?

A Here are the three things he asked me about, the fire pump and steering engine and main engines.

Q (*By Mr. English.*) I suppose you are a practical steamboat man? A I am learning something every day, Mr. English.

Warren D. Chase, re-direct.

Re-direct examination by Mr. Faulks.

Q There was one further question I intended to ask Mr. Chase, when I was interrupted a moment ago. You were asked by Mr. English with reference to where the company could have been getting any money except from the Pacific Navigation Company in December, 1913, when it needed some additional funds with which to meet the interest on the first mortgage bonds. I call your attention to the minutes of a meeting of the board of directors, page 159 of the minute book, meeting of November 10, 1913, it appears there was a resolution requesting the American Trust Company as trustee under the mortgage of the Metropolitan Steamship Company, dated November 15, 1909, to turn over to the company insurance moneys which it had collected to the amount of $36,617.06. Will you explain that situation, and about the receipt of these insurance moneys?

Mr. English. That is four years after the date I asked him about.

A No, it is 1913.

Mr. English. Oh, I thought you were talking about 1909.

A No, November 10, 1913. When an accident occurs to one of the boats the representative of the underwriters, the adjusters, and the owners of the boats or their representatives get together and agree upon the loss, and the customary way has been to have the damage repaired in as reasonable manner as possible, and it has been done by the Pacific Navigation Company, and the amount of the repairs has been allowed as a loss. Then claim has been made,

after the adjusters have passed it and allowed it, upon the companies for payment, the Pacific Navigation Company has in the meanwhile paid —I am going back to the time of the contract— has meanwhile paid for the repairs. The insurance company, when they come to pay the money, pay it over to the treasurer of the Metropolitan Steamship Company, and in that way funds would come into the hands of the treasurer of the company which did not pass through the trustee of the sinking fund connected with the second mortgage.

Q And passed by the trustee to the steamship company under the terms of the mortgage? A Yes. Request was made November 10, 1913, for the payment of thirty-six thousand dollars, and eight days later, on November eighteenth, the usual resolutions were passed in connection with the investment of moneys in the sinking fund, and you can draw your own inference as to where the money came from to pay the sinking fund first mortgage.

Q There were moneys coming in from that source from time to time? A Yes.

Re-cross examination by Mr. English.

Q I understood you to say at the beginning of this thing you were employed by Mr. Robbins? A I did not say I was employed by him, I said said he asked me to be associated with him.

Q You were called into the matter by Mr. Robbins? A Yes.

Q You did receive pay for what you did in various capacities? A Yes.

Q Besides this stock? A Besides this stock, yes; I testified this morning to receiving some-

where about three thousand dollars from the New England Securities Company.

Q Now, you have already said that as far as you know the money which bought those securities, including the stock you now hold, came from the Billard company? A I said that the New England Securities Company borrowed one million and a half from the Billard company, which was used in the chain of transactions I testified to the other day.

Q You trace it back to the Billard company as the beginning source? A One million, five hundred thousand dollars.

Q Did it occur to you to go to the office of the Billard company and ask them if it would be agreeable to them for you to retain nearly fifteen thousand shares of stock which was bought with their money? A The Billard company had nothing to do with it.

Q I did not ask you that. A No.

Q Mr. Robbins' offer of title was good enough for you in that matter? A There was no offer of title; that was the arrangement between Mr. Robbins and myself.

Q Mr. Robbins was the source of your authority for appropriating to yourself—I do not mean in an improper manner—but taking into your own possession as your own that stock?

Mr. Faulks. I object to that.

The Court. I exclude it upon the ground that it has already been answered.

Adjourned until Wednesday, January 17, 1917, at Chancery Chambers, Newark, New Jersey.

Continuation of proceedings pursuant to the adjournment last had, on the 17th day of January, 1917, at the place and in the presence of the parties and the Court as before.

GALEN L. STONE, sworn.

Direct examination by Mr. Faulks.

Q Mr. Stone, have you been previously examined as a witness in this case? A I believe it was the same case, yes.

Q You testified in Boston and also in New York, did you not? A I recall testifying in Boston.

Q Do you recall being examined there by Mr. English who sits at the table here? A I believe so.

Q Are you connected with the Eastern Steamship Corporation? A I am.

Q In what capacity? A As a stockholder and director.

Q Have you been a stockholder and a director in that company ever since it was formed in 1912? A I have.

Q And as such director have you taken an active part in the business of the company? A I have.

Q And are familiar with its affairs? A Yes, sir.

Q What is the amount of outstanding capital stock of that company? A There are thirty thousand shares of a par value of one hundred dollars each of preferred stock, and sixty-seven thousand five hundred shares of a par value of twenty-five dollars each of common stock.

Q Was the original issue of common stock sixty-seven thousand five hundred shares? A The original issue was the shares of a par value of fifty dollars each; they were subsequently run down to a par value of twenty-five dollars each; the original issue as I recall was sixty-one thou-
10 sand five hundred shares.

Q What was the cause of the issue of common stock being increased from sixty-one thousand five hundred to sixty-seven thousand five hundred? A In connection with the purchase of three ships from the Dominion & Atlantic Railway Company we issued six thousand shares of the common stock in part payment.

Q Mr. Stone, during any time that you have been a director in the Eastern Steamship Cor-
20 poration has the New Haven Railroad Company or the Maine Steamship Company or the New England Navigation Company or any other subsidiary or allied company of the New Haven Railroad had a representative on the part of the directors of the Eastern Steamship Corporation?

Mr. English. I think that is immaterial.

The Court. I think so also, but I will let
30 him answer it to his knowledge.

A No sir.

Q Has the New Haven Railroad or any of the other companies which I have just mentioned at any time during that period controlled or in any wise sought to control the Eastern Steamship Corporation?

Mr. English. The same objection.

The Court. The same ruling.

40 A No sir.

Q It already appears in this case, Mr. Stone, that the Eastern Steamship Company owns and operates the steamers Bunker Hill and Massachusetts between Boston and New York; do they still continue to operate those boats on that run? A We operated them all through the summer season of 1916 and up to the early part of December.

Q Prior to this year, that is prior to 1916, you also operated them in the years 1912, 1913, 1914 and 1915? A Yes.

Q And during what period of each of those years were they operated? A From an early day in June until approximately the first of October, the seasons varying somewhat.

Q Why is it that they were operated later in 1916 than in the earlier years? A Well, we operated them later in 1916 because we were able to use the Cape Cod Canal.

Q When was that opened? A A definite date of opening is hard to state, small ships I presume went through there for some time; we first began to use it the early part of June, 1916.

Q Was that as soon as it was available for ships of the tonnage of the Bunker Hill and Massachusetts? A Very nearly so.

Q Has the canal been closed at any time or times since then? A Yes; the canal was blocked through the sinking of a coal ship in July, 1916, for a few weeks, and is now closed because of the sinking of a second ship there in the early part of December.

Q Now, can you tell us either from recollection or from any records that you have with you what the earnings of the steamers Bunker Hill and Massachusetts were during the years 1912 to 1916 inclusive?

Mr. English. Objected to. There is no basis of comparison, under the evidence, between the Bunker Hill and the Massachusetts on the one hand, and the Harvard and Yale on the other. Mr. Morse and Mr. Austin testified as to the character of those ships and both testified that they were of a different character and different equipment and different construction and had different patronage, and whether the Bunker Hill and Massachusetts would earn much or little is no evidence of what the Harvard and Yale would have earned if they were on the same run.

The Court. Apparently this witness has been examined before on that and he testified that he could not tell.

Mr. Faulks. I do not think he has been examined on this question.

The Court. Page 634, when you tried to compare the Bunker Hill, the Old Colony and the Massachusetts with the earnings of the Harvard and Yale.

Mr. Faulks. Your Honor will observe, I think, that this question is not the same one.

The Court. It is not the same, no.

Mr. Faulks. Not the same one as was answered by Mr. Austin when examined in Boston, and I think it is clearly admissible; the claim being that passenger boats can be operated at a large profit between Boston and Massachusetts. Now, there is in the evidence already a comparison of the Massachusetts and Bunker Hill with the Harvard and Yale. It is true that Mr. Morse said the other day that boats of the one company

were not in the same class as the other company, but Mr. Austin was examined at great length in Boston by Mr. English in reference to the size, earning capacity, number of staterooms, rates of fare, and everything else, of the Yale and Harvard as compared with the Bunker Hill and Massachusetts. Now, I should think that your Honor would desire whatever information was available to enable you to compare the earnings which the Yale and Harvard have made on the Pacific coast with what they might have made on the Atlantic coast. Mr. Morse was allowed to testify as to what he thought the Yale and Harvard would earn here at this time, and in ascertaining the value of that testimony it seems to me that it would be important to know what the Bunker Hill and Massachusetts earned there during that time.

The Court. I will permit it.

Q (Question read.)

Mr. English. That ought to be yes or no, and then I can find out how he knows.

The Court. Yes.

Mr. English. Yes or no, whether you can tell.

A Yes.

Q (*By Mr. English.*) You can tell? A Yes.

Q (*By Mr. English.*) Do you mind telling me how you can tell, because we asked you practically the same question when we examined you in Boston, and you said then you didn't know or you didn't have anything to go by.

Mr. Faulks. He said "I cannot testify from my recollection."

Mr. English. No, he said "My knowledge is not sufficiently accurate to permit me to answer that."

Q (*By the Court.*) How can you tell? A I asked Mr. Bird, the auditor of the Eastern Steamship Corporation, to give me a statement of the gross business, the expenses, the fixed charges that would be allocated, so far as we could determine, to those two ships for the ten months of the year 1916, and comparative figures for the ten months period in each of the preceding years, 1912, 1913, 1914 and 1915, and Mr. Bird hands me some figures with this description.

Q (*By the Court.*) Do not read the figures, please. A No, I am not.

Q (*By Mr. English.*) Your source of information then is the statement handed you by Mr. Bird? A Yes.

Q (*By Mr. English.*) You didn't have any— A He describes it this way, summary of operations—

The Court. Just a minute.

Q (*By Mr. English.*) You did not have charge of the operating end of those ships, I imagine? A No, sir.

Q (*By Mr. English.*) And you haven't any first hand information from actual management or operation of the steamers during that period? A No, sir.

Q (*By Mr. English.*) Your sole source of information is the statement handed you by Mr. Bird? A Yes.

Mr. English. I think that is clearly inadmissible.

The Court. I will exclude the testimony.

Q Have you been familiar with the operations of the Eastern Steamship Corporation ever since the company was formed? A With the result of the operations.

Q Have you been familiar with its earnings and expenses and other fixed charges? A Yes, sir.

Q And have you had reports made to you from time to time by the auditor and other financial officers of the company as to the earnings and financial results of the operation of the Bunker Hill and Massachusetts? A Yes.

Q And are you able to state whether these figures which now have been furnished you by the auditor of the company compare or not with those figures which you have thus received in the ordinary course of business, whether they are the same figures, giving the same results? A They produced the same impression on my mind as to the result of the operation.

Mr. Faulks. I submit in view of this, your Honor—

The Court. I exclude it; it is purely hearsay.

Q From any information which you have as to the operations of the Bunker Hill and Massachusetts, and the expenses of such operation, and the fixed charges of the company covering such operation, can you tell me approximately what the net earnings of those boats were for the year 1912?

Mr. English. That I object to, because he has no information.

The Court. I will exclude it.

Mr. Faulks. The question is whether he can tell. Your Honor, I think he ought to be permitted to answer that.

The Court. Yes or no, can you?

A With the same source of information I have described before, yes.

Q Well, having refreshed your recollection from this source of information can you answer that question? A Yes.

Q Please do so.

Mr. English. I object to that.

The Court. I exclude it.

Q Are you able, Mr. Stone, without gathering any information from the papers which you have before you, to tell me whether or not the net earnings of the operation of the Bunker Hill and Massachusetts during the year 1912 were or were not in excess of twenty thousand dollars?

Mr. English. I object to that.

The Court. I will exclude it.

Mr. Faulks. If Mr. Stone, as a director of this company, and a man who has been active in its business from the time of its incorporation, says that he can tell what those boats earned, without recourse to any papers, and from his own knowledge of the business of the company, within limits, don't your Honor think that is admissible?

The Court. No, upon objection I will exclude it. I think that the books and records of the company are the best evidence of what those boats made. You might as well say that any director of a company can come on the stand here and say that a

certain train makes a certain amount of money during a certain run, merely because he happens to be a director of the company and gets reports.

Mr. Faulks. Mr. Morse was allowed to testify, over my objection, the other day, as to his knowledge of the earnings of these boats prior to the receivership, although it was only shown that he attended directors' meetings once a month and received reports at that time. Now, the weight of the evidence would depend of course upon the familiarity which Mr. Stone has as to the operations of his company.

The Court. Where was Mr. Morse permitted to testify to that? I remember Mr. Morse was permitted to testify as an expert as to what he thought the boats could make, but that is another thing.

Mr. Ward. He testified that the Harvard and Yale earned sixty thousand dollars a month.

Mr. Faulks. That the receivers so told him.

Mr. Ward. Yes.

Mr. Faulks. But I am referring to an earlier part of his testimony. If your Honor will refer to page 90 and the few succeeding pages.

Mr. English. The nearest we got to it was on page 95, when I asked him whether this company was a paying proposition and he said he always considered it so; that is the nearest I can find to it.

Mr. Faulks. Well, that is as far as you saw fit to ask him. I am asking this wit-

ness whether he can say that the earnings were more than a certain sum or not in 1912.

The Court. I will exclude the testimony.

Q Mr. Stone, in 1912 did you attend the various meetings of the board of directors of your company? A I did.

Q Were reports made at those meetings as to the earnings of the company? A Yes.

Q And did you from time to time receive reports from the operating officials of the Bunker Hill and Massachusetts as to their earnings? A Yes.

Q And as to the expense of operation of those boats? A Yes.

Q And were you familiar at that time with the fixed charges of the company? A Yes.

Q Were the affairs of the company and the revenue from these boats and the expense of operating them discussed during that period by you from time to time with the operating officers of the company? A Yes.

Q Did you then have a large financial interest in the company itself? A I did.

Q Large stockholding interest? A Very large.

Mr. Faulks. Now, I renew the question, if your Honor please.

The Court. I will exclude it.

Mr. Faulks. I call your Honor's attention to the fact that it seems to me that in view of the testimony that Mr. Morse was permitted to give under the circumstances—

The Court. Whatever answers he made that were material were answered without objection.

Mr. Faulks. I find this objection on page 90, to the question: As a business proposition operated as a freight line did it pay or didn't it—

The Court. That was excluded, that question, and it was not afterwards asked.

Q Mr. Stone, how long have you known the Yale and Harvard? A Well, at least seven years or eight years.

Q Were you familiar with them when they were on the run between Boston and New York? A Quite familiar.

Q In your opinion if those boats had been operated there in the years 1911, 1912, 1913, 1914 and 1915, and the Bunker Hill and Massachusetts had not been operating there during any of those years, how much money could the Yale and Harvard have earned on that run in those years?

Mr. English. Objected to on the ground that he is not qualified to answer the question. He is not an operating ship man.

The Court. I will exclude it. He is a banker.

Q Mr. English says that you are not an operating ship man; how long have you been interested in the shipping business? A Since 1907.

Q And with what companies have you been connected during that time?

The Court. He has already testified to that, Mr. Faulks.

Q Have you been familiar from 1911 on with the operation of boats on the New England coast? A Yes.

Q And from Boston to New York? A Yes.

Q Are you familiar with the financial result of such operation of various lines of such boats? A Yes.

Q Do you know whether or not the Bunker Hill and Massachusetts have been run as often as the Harvard and Yale were before? A Yes.

Q What is the fact? A Substantially the same operating schedule.

Q And are you familiar with the physical characteristics of both sets of those boats? A Yes.

Q Do you know the number of passengers they were licensed to carry? I am not asking you what the number was, but if you know. A Yes.

Q Both in the case of the Yale and Harvard and of the Bunker Hill and Massachusetts? A Yes.

Q Do you know the number of passengers which each set of those boats could accommodate? A Within a very few, yes.

Q Do you know the rates which were charged for transportation on each set of those boats during the times they were run there? A Yes.

Mr. Faulks. If your Honor please, I submit that this witness is enough of a steamship man to be permitted to answer the question.

Mr. English. I object to it.

The Court. I will permit him to answer.

Mr. English. Will you let me cross examine before he does answer.

The Court. No, I will let him answer. It will have no effect on my mind, but it may have some effect on the Court of Appeals. He may answer.

Q (Question read.) A My judgment is they couldn't have possibly earned their operation expenses and the proportionate fixed charges applicable to those boats.

Q Mr. Stone, do you know the Pacific Alaska Navigation Company? A Yes, sir.

Q Are you a stockholder in that company? A I am.

Q And a substantial stockholder? A A small stockholder; my holdings are three hundred shares.

Q Have you had those holdings for some time? A No, sir.

Q Have you been familiar with that company for some time? A For perhaps three years.

Q Do you know about how long it has been operating on the Pacific coast? A No, sir.

Q For at least three years, I judge? A Yes, sir.

Q Do you know anything about the financial condition of that company? A Yes, sir.

Q What is its financial condition?

Mr. English. Objected to as immaterial.

The Court. I will exclude it on that objection.

Mr. Faulks. If your Honor please, it may be material for the Court to know the existing situation, although counsel on the other side doesn't seem to think so.

The Court. Your going into it has been prevented by Mr. English. I will assume that the Pacific Alaska Company is a concern of good repute and full financial responsibility.

Q One other thing. Are you a bondholder in the Metropolitan Steamship Company, either you or your wife? A Mrs. Stone is, yes.

Q To what amount? A She holds one hundred and twenty-one thousand of the first mortgage bonds.

Q Has she held those for some years? A Yes, sir.

Q That is the Metropolitan of New Jersey? A It is the corporation that owns the Yale and Harvard.

Cross examination by Mr. English.

Q You are a banker, are you not? A Yes.

Q Of the firm of Hayden Stone Company? A Yes.

Q You never operated a steamship line as an operating man, did you? A No, sir.

Q Your familiarity with steamship operations is what comes to you through your relations to steamship companies as a financial man? A No sir.

Q How else then? A As president of several steamship corporations, as active director, as chairman of the executive committees of several.

Q Did you in those capacities operate, or did you have other agents to do the operating? A I had other agents, as every manager does.

Q Your duties were largely confined to the financial end of the transaction, were they not? A No, sir, the consideration of every phase of the business.

Q When you said that in your opinion the Harvard and Yale, if they had been operated from 1911, could not have earned their operating expenses, what were you putting the operating expenses at? A I said the operating expenses and fixed charges to be allocated to them.

Q What were you putting the operating expenses at? A I did not put them at anything; I am basing my judgment on my belief that for commercial purposes the Yale and Harvard and the Bunker Hill and Massachusetts are substantially equal, through my knowledge of the operations of the Bunker Hill and the Massachusetts.

Q The basis of your answer then is whatever knowledge you have of the Bunker Hill and Massachusetts is a sort of guide by which you charge the Harvard and Yale? A No, because the relative value of the two classes of ships is not material it is a matter of other considerations.

Q Then you do not pretend to have any actual knowledge of the operation of the Harvard and Yale? A Well, they have not been operated there during that period.

Q I know they haven't. But you haven't any knowledge of the operation of the Harvard and Yale at any place or at any period, have you? A Only such knowledge as I acquired during their operation in 1910 or 1911.

Q When they were operated by what we call the Maine Company No. 2? A Yes.

Q That company of which Mr. Robbins asked you to be a director? A Yes.

Q In giving your answer you didn't have any particular operating expenses in mind then? A No, sir.

The Court. He has said that.

Q Did you have any particular proportion of fixed charges in mind? A Yes.

Q What gross or fixed charges were you thinking about? A Five per cent. interest on two million dollars of bonds and a sinking fund.

Q And what proportion of that were you going to charge against the Harvard and Yale? A All of that.

Q Are you a director of the Pacific Alaska Navigation Company? A No.

Q Did you know that it had made an operating agreement or lease for the operation of the Harvand and Yale? A Only such knowledge as I have acquired in correspondence with the president of that corporation.

Q Who is the president of that corporation? A H. F. Alexander.

Q When did you acquire knowledge about that?

Mr. Faulks. Objected to as immaterial.

The Court. How is it material?

Mr. English. I think it may show some connection with some other things in this case.

The Court. Answer the question.

A Approximately three months ago.

Q That is the first you heard of it? A By correspondence, yes.

Q How had you heard of it otherwise than by correspondence? A Orally.

Q From whom? A Through conversations, running over several months preceding, with Alexander from time to time when he was in this part of the country.

Q Mr. Alexander was here in the East? A Yes.

Q When was that? A Several times in the last two years, but some time last summer, it is rather difficult to fix the period, in the middle of the summer I should say.

Galen L. Stone, cross.

Q During the summer, July or August? A Yes.

Q Mr. Alexander was here at the time? A Yes.

Q You discussed with him the advisability of his company taking on the Harvard and Yale? A Yes.

Q Did you discuss it with anybody else? A No.

Q Did you suggest who he might get in touch with to perfect his arrangements? A No.

Q How did he know who to take it up with then? A I do not know.

Q You did not tell him? A No.

Q But you did suggest to him that it might be advisable for him to look into the matter? A No, sir.

Q Well, you discussed it with him apparently? A Yes, sir; he simply asked my advice about it.

Q Had somebody approached him on the subject before that?

The Court. How does he know?

Q I do not know, unless Mr. Alexander told him. Did Mr. Alexander say whether anybody approached him on the subject? A I cannot say whether the approach of the subject was original with Mr. Alexander, or whether it was suggested to him by somebody else, I do not know.

Q Well, whether original with him or suggested by somebody else, did he name the somebody else?

Mr. Faulks. Objected to as immaterial.

The Court. I exclude it.

Galen L. Stone, cross.

Q Mr. Stone, you know Mr. Robbins of course? A Yes.

Q Did you ever talk with him about this operating agreement with the Pacific Alaska Navigation Company?

Mr. Faulks. Objected to as immaterial.

The Court. He can answer. We have gone into it; we know that Mr. Robbins did know all about it; he represented the company on the Pacific coast.

A I do not clearly recall, but certainly not with respect to any details of the arrangement.

Q Not the details, but just a general idea? A It was just mentioned to me by Mr. Robbins that he was negotiating with Mr. Alexander.

Q When was that? A I should say sometime last summer.

Q Some time in the summer? A I think so.

Q When Mr. Alexander was here in the East? A Upon second thought I might say that Mr. Robbins perhaps mentioned the subject to me a year ago, I think, before he made the trip to the Pacific coast, that he had in mind some possible arrangement of that sort.

Q He consulted you about the standing of this Pacific Alaska Company at that time? A No, sir.

Q He just mentioned it to you about a year ago? A Yes.

Q Did you and Mr. Robbins often consult about the Yale and Harvard?

Mr. Faulks. Objected to as immaterial.

The Court. I will exclude it as not a proper cross examination.

Mr. English. Can I make him my witness for the purpose of asking the question?

The Court. No, sir. We have been into that so often.

Q The Massachusetts and the Bunker Hill would be operating now if it was not for the blockade in the Cape Cod Canal, wouldn't they? A Yes.

Mr. Faulks. Objected to as immaterial.

Q The opening up of that canal makes that an all-year-round service between New York and Boston, does it not?

Mr. Faulks. Same objection.

The Court. I exclude it.

Mr. Faulks. Did your Honor admit the previous question?

The Court. I admit the previous question and exclude this. The reason I exclude this is because we know it, it is in the case time and again.

Q You said that the New Haven Railroad had no representative on the directorate of the Eastern Steamship Corporation? A Yes.

Q It does not even vote its stock, does it? A I do not recall whether it has voted that stock at annual meetings or not.

Q Do you know as a matter of fact that the government, the United States government, exacted as a condition from it, as part of some negotiations it had, that it should not vote that stock? A I know that as a matter of newspaper report, but that could only affect a portion of the period over which they have those stocks.

Q Do you know when that arrangement went into effect, as between the railroad and the government?

Mr. Faulks. He says he knows nothing about it except from newspaper reports.

The Court. I will exclude all this line if you object. He does not know anything about it except what he read in the newspapers.

Q Does your company run any line between New York and Boston except the Massachusetts and Bunker Hill? A They operate four freight ships.

Q What are the names of those ships?

Mr. Faulks. That has been covered before, your Honor, fully.

The Court. I exclude it.

Q Our old friend the Herman Winter, I suppose. A Yes, the same old chap.

Q Does the New Haven operate any freight line between New York and Boston at the present time? A Not as far as I know.

Mr. Faulks. Objected to as immaterial and not cross examination.

The Court. I will exclude it as not cross examination.

Mr. English. I would like to ask that question under some theory. Can I make him my witness to ask that question?

The Court. No.

Q What is the name of the line, or by what name is the line known which your corporation operates between Boston and New York. A Familiarily and for a long time as the Metropolitan Line.

Q You still call that the Metropolitan Line? A Yes.

Q Those ships, the Massachusetts and Bunker Hill, are known to the public as the Metropolitan

Line? A In so far as we are unable to change it to Eastern Steamship Line, yes; we are gradually changing it.

Q Without reference to your ability to change it, it is still known to the mind of the public as the Metropolitan? A Without doubt, to a great number.

Q And so advertised? A Yes.

Q I imagine you are able to change the form of advertising if you want to? A We find it profitable to still include Metropolitan Line in smaller type.

Q Still attached to some of the good will out of the old wreck, isn't that right? A Without doubt.

Q And that you get the benefit of in operating your present ships? A Yes.

Q Do the freight boats operate under the same name?

Mr. Faulks. Objected to as not cross examination.

The Court. I exclude it as not cross examination.

Mr. English. Can I make him my witness?

The Court. Yes.

Q Do the freight boats still operate under the name of the Metropolitan Line? A Yes.

Q So that all the boats which you operate between New York and Boston, namely, the passenger steamers Massachusetts and Bunker Hill, and the freight boats, go under that name and are so advertised? A Yes. I would like to correct my answer which I gave before when you brought in the term good will, if I may.

The Court. If you want to correct your answer you may.

A I would like to say that the name, The Cape Cod Canal Route, has supplanted that of the Metropolitan Line for the passenger service last year.

Q You work the two in together now? A Yes, but Cape Cod Canal particularly.

Q So you have got a merger of the Metropolitan Line and the Cape Cod Canal Route; is that it? A Yes.

Q The freight boats do not go through the canal, do they? A They have at times, yes.

Q When you were examined before you said that a little time previous to that you had been for a short time the director of the New Haven? A Yes.

Q Have you been a director of the New Haven since the incorporation in Boston? A No, sir.

Q You are quite closely allied in financial transactions with the Boston people, are you not? A No, sir.

Mr. Faulks. I object.

The Court. Well, he says no.

Q You remember the time when your Eastern Steamship Corporation took over the properties of the Metropolitan of Maine No. 2, which owned those freight ships and the wharf, do you not? A Yes.

Q And as a part of the consideration your company gave one million seven hundred thousand of bonds, did it not? A Yes.

Mr. Faulks. I object to that both as not cross examination, and as having been covered before.

Mr. English. I concede it is not cross examination. I think it is material evi-

dence, and I would like to make him my witness.

The Court. Well, it is in.

Mr. English. Will your Honor let me ask this question.

The Court. Well, the answer is "yes."

Q Have you since those bonds were turned over in that way made any efforts to buy them back?

Mr. Faulks. Objected to as not cross examination.

Mr. English. I am not putting this in as cross examination.

The Court. How is it material?

Mr. English. If your Honor lets me ask this question when you hear the next question you will see.

A Yes.

Q When you negotiated for the purchase of those bonds, did you take the matter up with Edward D. Robbins? A Yes.

Mr. Faulks. I object to that as not cross examination.

The Court. It is not cross examination.

Mr. English. No sir, I do not put it on that ground.

The Court. I will permit it.

Mr. Faulks. I object to it further upon the ground that it is immaterial, irrelevant and incompetent.

The Court. I will permit it.

Q When you negotiated for the purchase of those bonds did you negotiate with Edward D. Robbins? A Yes.

Q When was that? A I should say more than six months ago.

Q And you finally got the bonds, did you not? A Yes.

Mr. Faulks. I object to that, and I ask that that answer be stricken out on the same ground.

The Court. I will permit it to stay in; I do not know what effect it has.

HENRY W. GOODALL, sworn.

Direct examination by Mr. Ward.

Q Where do you reside? A At Long Beach, California, now.

Q Is that a suburb of Los Angeles? A Yes.

Q How long have you lived in California? A I was born there; forty-four years.

Q That has been your residence all your life? A Yes.

Q What business have you been engaged in since you reached your majority? A In shipping business and seafaring life.

Q Have you been a mariner? A Yes, sir.

Q Actually commanded ships? A Yes, sir.

Q Generally speaking, of what character? A Well, combination freight and passenger ships.

Q Large or small? A Well, three, four or five thousand tons, various sizes.

Q Have you also been engaged in the shipping business from a commercial standpoint? A Yes, sir.

Q Covering what activities, in a general way? A Well, I have operated ships, and bought and sold them, and had to do with ships in nearly every way.

Q Was your father in the shipping business? A My father was in the shipping business before me, yes sir.

Q Are you a member of the firm of Bennett, Goodall & Company? A I am a member of the firm just incorporated in California of Bennett & Goodall.

Q And they are in the shipping business? A Yes, sir.

Q When did you first become interested in the project of running passenger ships between San Francisco and Los Angeles? A Well, I was interested for a number of years when I was in the employ and connected with the Pacific Coast Steamship Company, and I always considered at that time that there would be a future opportunity for vessels of a high class on that run.

Q What was that time, about? A That is ten years ago, possibly longer.

Q Ten years ago did you have in mind the acquisition in some manner of vessels for that purpose? A Yes, sir.

Q Vessels of what general style? A Well—

Mr. English. Is ten years ago material now?

Mr. Ward. That is when the story begins.

A Vessels of the style of the Yale and Harvard.

Q Were you in touch with a naval architect at that time in respect to that matter? A Yes. A year prior to the fire and earthquake in San Francisco I had gone into the matter very deeply and had gotten quite a great deal of data as to the volume of shipping, both freight and pas-

senger, between the two points, not only by water but by rail as well, and I, furthermore, got estimates from Mr. George V. Dickey, who was a competent marine architect and has been connected with the Union Iron Works in San Francisco for a number of years, and I had gotten him to draw up some rough plans and specifications for ships along the lines I thought adapted to the business; about that time the fire and earthquake came along and not only delayed any action on my part but burned up all my data.

Q The earthquake was in what year? A 1906 I think, April, 1906.

Q What is the Union Iron Works, what sort of a concern? A A very large ship building concern, one of the largest in the United States.

Q When did you first hear of the Yale and Harvard? A I first heard of the Yale and Harvard through Mr. Dickey, when Mr. Dickey had severed his connection, or the Union Iron Works was sold out to the combination known as the United Steamship Building Company, which resulted in a change of the personality of the institution, and Mr. Dickey was no longer connected with it but was employed by the Pacific Coast Shipbuilding Company, to come to Camden, New Jersey, to oversee the construction of the two ships called the President and the Governor; while he was there he wrote me a letter that he had been aboard the Yale and Harvard which were then under construction.

Mr. English. Wait a minute. Is what he wrote evidence?

The Court. I suppose the only purpose is to show that knowledge of the Yale and Harvard came to Captain Goodall from some source other than the New York, New Haven & Hartford or Robbins, or anyone concerned with it.

Mr. English. Well, I should think he would say he learned it through Mr. Dickey.

Q At that time were they still under construction or gone to sea? A They were under construction.

Q Did you at that time form any judgment as to the suitability of the Yale and Harvard for your purpose on the Pacific coast? A Not only described the ships, but sent out a very detailed account to one of the marine magazines, and the ships were almost identical in size and tonnage and general structure as the ships that we had been talking of previously.

Q Did you afterwards talk with Mr. Dickey about the matter? Yes or no. A Well, I do not know as I saw Mr. Dickey until some time later on; he was still in the East.

Q Did you come East in the year 1907? A I did, yes, sir.

Q And did you see the Yale and Harvard? A Yes, sir; traveled on them.

Q That was after they had been launched? A Yes; they were then operating between New York and Boston.

Q Did your examination of those vessels operate on your judgment as to their—

Mr. English. That is a leading question, and I object to it on that ground.

Q After seeing the vessels what judgment did you form as to their suitability for Pacific

coast purposes? A I thought they were the best ships for the business in which I would like to be interested.

Q At that time, 1907, were you connected with or interested in the New York, New Haven & Hartford, or any of its subsidiaries? A No, sir.

Q In any way? A None at all.

Q Did you do anything to ascertain what the earnings of the Yale and Harvard were here in the East?

Mr. English. When was that?

Q 1907? A Well, I traveled back and forth on the ships and counted the passengers as they went ashore, so as to get an idea as to the volume of travel they were enjoying, and knowing the rate of passengers and the money they were receiving I made a rough estimate in my own manner of what they were probably doing.

Q And you found that they were carrying on an average about how many passengers? A Well, that is ten years ago now, very nearly, and I do not know as I can remember, but my recollection is that they were averaging about two hundred and seventy-five passengers.

Q (*By the Court.*) Round trip or single trip? A Each way, sir.

Q Did you observe the character and amount of freight that they were carrying? A Yes, sir, as nearly as I could; I didn't have full access, I simply took my observation as the opportunity presented.

Q You saw the freight being loaded or unloaded? A Being loaded and unloaded, and once or twice in my various trips I had an opportunity to walk up to the freight deck and see what was there.

Q Did you know what the freight rates were that they were earning? A Well, I did at that time, but I couldn't tell now.

Q Did you at that time form a judgment as to the probability of their financial success on the Atlantic coast? A Well, I became convinced that they never would be a financial success on the Atlantic coast.

Q Did you have a judgment in reference to the probability of success out on the Pacific coast? A I thought they would be a success on the Pacific.

Q What are the factors which distinguished the successfulness on the one coast from the other, in your judgment?

Mr. English. Does your Honor think he is qualified to answer this question?

The Court. You permitted it to go in.

Mr. English. I permitted him to answer that one question, but he is going into details now and I am trying to object to that.

The Court. I will permit him to answer; I should have ruled out the other question if you objected to it.

Mr. English. I move to strike it out now if it is not too late.

The Court. You may answer the question.

A The cost of operating on the Pacific coast would be less than on the Atlantic coast; they could operate the whole year round on the Pacific coast, whereas they operated a very short season on the Atlantic coast, and the rates of freight and passengers were higher, comparatively, on the Pacific than they were on the Atlantic.

Q What as to the relative cost of fuel? A If my recollection serves me right the ships were operating last year here on eighty cents fuel; during the period that we operated them on the Pacific coast they operated as high as sixty-seven and as low as sixty-three cents.

Q From what fields does the oil used for fuel on the Pacific come from? A Oh, various parts of California.

Q What are the weather conditions on the run between San Francisco and Los Angeles? A Well, a portion of the trip is very similar to Long Island Sound, up as far as Santa Barbara Channel, and between Santa Barbara Channel and San Francisco it is outside and very similar to what you would get passing around Cape Cod on the Atlantic.

Q While you were here in 1907 what, if anything, did you do to effect your purpose to get the boats out on the Pacific coast? A Well, I didn't accomplish anything.

Q Did you see anyone about it? A The first man I went to see was Mr. Austin, who at that time was president of the Consolidated Steamship Lines that owned the Metropolitan, and I talked with him.

Q You understood him to be operating these boats; is that right? A Yes. I had a letter of introduction to him from Mr. Englis, whom I knew, Mr. George Englis.

Q Is he the ship builder? A Well, he has been a ship builder, and his son is now a ship builder, but he was the head of the Metropolitan Steamship Company when they bought a little ship that I took out to the Pacific coast, and I met him at that time.

Q Did you see anybody else? A Yes, I went and had a talk with Mr. Mellen of the New Haven Railroad.

Q Had you known Mr. Mellen prior thereto? A No, I didn't know Mr. Mellen.

Q Why did you go to Mr. Mellen? A Well, I was imbued with the fact, as a good many others have been before and since, that an arrangement might be made to get the assistance of the New Haven Railroad company to send those ships away from the Atlantic coast.

Q Get what ships sent from the New Haven Railroad? A The Yale and Harvard.

Q I don't think that is clear—oh, get the assistance of the New Haven—I misunderstood.

The Court. Get the assistance of the New Haven to get the Yale and Harvard to the Pacific coast.

Q In a very general way what did you discuss with Mr. Mellen? A Well, I couldn't discuss it at all because he wouldn't listen to it.

Q Did you discuss earnings and volume of traffic and matters of that sort? A No. If I recollect right I think he expressed himself, I am not sure, he expressed himself that he was in touch with the volume of business which the ships were doing and that he was convinced, as I was, that they never could be a financial success on this coast.

Q Did you see anyone else? A I don't know of anybody else I did see at that time, 1907; I may have, it is sometime ago now.

Q Well, nothing came of any endeavors on your part to get ahold of the boats? A Not in that year, no.

Q When did the matter next come to your attention? A Well, the matter had my attention

all the while until we finally got possession of the ships.

Q Do you know Mr. Thomas B. McGovern? A Yes.

Q What is he? A Mr. McGovern at the present time is now engaged in the oil business.

Q What was he at that time? A At that time he was a ship broker, and, I don't know, various lines of business here in New York.

Q Did he confer with you on the Pacific coast in reference to some proposition about those boats? A Why, McGovern has been a party to some negotiations which were attempted with Mr. Morse to buy these ships for some parties that were having headquarters in Seattle—the principal man of which was a man named McKane, and they did not meet with any more success than I did, but in the meantime, oh, I think along about 1908, Mr. McKane died, and he being the active participator, those who were trying to get the ships dropped out, and I met Mr. McGovern in San Francisco and we were discussing the situation as to these ships and the effort which had been made by both his people and myself to get them, and I told him at that time that in my opinion it was only a question of time when those ships would have to come to the Pacific coast, and that I had been in the East a good deal on various other matters, and had wasted a good deal of time on this proposition one way or another, and that I was on the Pacific coast at that time and he was returning to his home in New York, and if he would watch the developments and situation and keep me posted I would work with him and if anything resulted in our finally obtaining the ships whatever profit there might accrue through the promotion I would divide with him.

Q Some further negotiations were had by you in 1909; is that right? A Why, yes; we watched the development of the receivership of the Metropolitan Steamship Company with the idea that when it came up we might be in a position either to bid on the property or in some way get the ships, and I came East at that time and we had some negotiations and I found on arrival here that the thing was pretty well tied up under a reorganization plan entered into by the various creditors of the steamship company, and backed on the other hand by the Assets Realization Company, and I got in touch with them with the idea of putting through a deal, but that did not develop saisfactorily.

Q You discussed a proposition with them? A Yes.

Q What was the general nature of the proposition that you had under discussion with them?

Mr. English. I object to that because it fell flat, he says so, and the other evidence in the case shows it, and it has no bearing now.

Mr. Ward. It explains the reasons why he took the matter up with the New Haven and his subsequent activities.

The Court. You may answer.

A Why, I had negotiations, McGovern and myself carried on negotiations with them with the idea of purchasing from them the securities which were to revert to them under this reorganization plan after it had been completed.

Q Did you want to buy or acquire all of the properties of the Metropolitan Steamship Company of Maine? A Well, the proposition was that we would acquire it from them, yes.

Q Did you want to acquire all of the properties that the Maine company had owned? A Well, I didn't want to acquire anything but the Yale and Harvard, that is what I was after from the first, but in our negotiations with the Assets Realization Company at one time it looked as though it would be necessary for us to take over the Metropolitan Steamship Company with all its holdings.

Q Then you had some negotiations with Mr. Mellen? A Well, we offered—when we finally reached what we presumed was a satisfactory arrangement with the Assets Realization Company and had entered into a tentative agreement with them, I was anxious to dispose of the balance of the property, except the two ships that I had been so earnestly endeavoring to get, and I made a proposition to Mr. Mellen to sell him the freight ships and the wharf property in Boston, which was all the company had except the two vessels I wanted.

Q You had a meeting with Mr. Mellen at the Grand Central station? A Yes, sir.

Q And Mr. Ledyard and Mr. Robbins were there? A Mr. Robbins was there, I don't know who else was there, there were various officials of the company in and out of the office there, there might have been other people there.

Q Was Mr. McGovern there with you? A Yes.

Mr. English. What is the date of that?

Mr. Ward. It is already in the testimony.

Q Do you recall the date, Captain? A I think it was in the late summer I think of 1909, I think about September, I would think so.

Q How did that conference conclude? A Well, they looked with favor on the proposition of buying the property that I offered, and the question was as to the clearness of the title, etc., which we could give them, and I remember, among other things, there was some discussion entered into to guarantee against any liens, etc., that being a delicate situation, the proposition of the floating property at that time, and it finally resulted in Mr. Robbins, the attorney for the company, being called in and consulted in the matter, and he made an appointment, as I remember it, at that time to go down and talk it out, together with him and the Assets Realization Company, McKinnon and the attorney, with the idea of meeting various points that we had discussed among ourselves.

Q Did you go down to such a conference? A Yes, we went down the next day as I remember it.

Q And who participated? A Well, McGovern and I were there, and Mr. Robbins and Mr. McKinnon, and my impression is now that that conference was held in the offices of the attorney of the Assets Realization Company.

Q (*By Mr. English.*) Mr. Marshall? A Marshall was a member of the firm, yes; I think the conference was held in Marshall's office.

Q Did you successfully carry out this proposition that you had under discussion with these various gentlemen? A No, we reached a deadlock at that meeting, and nothing could be accomplished I found.

Q Did you go to any other person or persons about that time in reference to obtaining the ships? A No; I had some talk with Laden-

berg & Thalmann, I think it was previous to that time, I think that was in 1908 or 1909, early in 1909, I have forgotten, but it was before that I know, because the first time I met Mr. McKinnon was in the office of Ladenberg & Thalmann when I went in there to discuss with them this proposition, and I called Mr. McKinnon in, and later on met him when he was carrying through this deal of taking the property over under the reorganization plan.

Q When it became apparent that you could not make those plans did you see anybody up in Boston about it? A Well, one of the reasons why the proposition fell through at that time, as given to me by the Assets Realization Company, was the failure of the various bondholders to agree among themselves as to the division of the cash that was to be put up, and they intimated to me that Fernald & Company in Boston were the stumbling block.

Q Well, you went up to Boston to see somebody? A I went up to Boston and had a talk with them.

Q Anything come of that? A No, the whole thing fell through.

Q Did you have a letter from Mr. Mellen turning down the proposition? A Yes, later on I got a letter from Mr. Mellen turning it down and rejecting our offer to sell him this other property.

Q Is that the letter which is marked in evidence D. 1, and reading as follows:

"January 7, 1910.

Mr. H. W. Goodall:

We have given consideration to your offer to sell to this company certain steamships for one

million dollars and a half, and we have come to the conclusion it is impossible to accept it."

A That is it.

Q Then what did you do? A Went home.

Q Were you through for the time being? A For the time being, yes.

Q Were you here in March, 1910? A I think not.

Q Did you have anything to do with the purchase from the Assets Realization Company and their associates of these securities by Mr. Nicholson? A Not a thing at all, no connection and no knowledge.

Q At this time, in the fall of 1909 and the opening of 1910 did you have any connection with the New Haven Railroad or any interest in it? A None whatever.

Q (*By the Court.*) Have you ever had? A None at all, haven't today and never have had.

Q Then when did the matter next come up to you? A Well, in the late summer of 1910 I got word from McGovern to come on East that it looked possible to accomplish something.

Q You did come East in what month? A Well, it was in the summer, around July or August, I do not remember exactly.

Q Then you entered upon certain negotiations? A It may have been later in the year; I know I stayed here then continuously until the ships finally went to the Pacific coast, which was in October.

Q Do you remember how long you had been here before they went to the coast? A I think about two months or six weeks, something around there.

Q Who were parties to the negotiations that you entered upon at that time? A Well, Mc-

Govern and I on our side, and we dealt principally with Mr. Robbins, E. B. Robbins, at that time.

Q And Mr. Chase? A And Mr. Chase.

Q Had you met Chase before? A No.

Q Why did those negotiations take as long as they did?

Mr. English. He didn't say they did. I object.

A I don't know that they did take long; I am not prepared to say just how long they did take.

Q As a result of the negotiations, among other things the Pacific Navigation Company was formed, was it not? A Yes, sir.

Q Who caused that company to be incorporated?

The Court. Do you want to go into that history again?

Mr. Ward. I only want to have this witness cover the entire story but in as brief a manner as possible, if the Court please.

The Court. There is no substantial dispute as to how it was formed.

Mr. Ward. No substantial dispute, no. I will withdraw the question.

Q How much money was paid into the treasury of the Pacific Navigation Company when it was formed? A Two hundred and fifty thousand dollars.

Q Cash? A Cash.

Q Whose money? A Why, my partner and myself put up one hundred and seventy-five thousand dollars, and a man by the name of Grey, of San Francisco, at that time chief agent of the

Cosmos line, a German line then running, put up fifty thousand dollars, and Victor Ettienne, Jr., another gentleman of San Francisco, put up twenty-five thousand dollars.

Q Were they friends of yours? A Both friends of mine, yes.

Q And the stock was issued to whom? A It was issued to these gentlemen and to our firm, as in accordance with that proportion. In addition to that there was some common stock issued to McGovern and myself in recompense for the efforts that we had made in consummating the deal, and in accordance with my agreement with McGovern.

Q You afterwards took over McGovern's common stock? A Well, I bought it later on, I guess about a year ago.

Q Did Mr. Robbins ever have any interest in the stock of the Pacific Navigation Company? A Not a dollar.

Q Or Mr. Chase? A No, sir.

Q Or the New York, New Haven & Hartford Railroad Company? A Not a dollar.

Q The Pacific Navigation Company became a stockholder of the Pacific company, a Connecticut corporation? A Yes, sir.

Q Did it pay into the treasury of the Pacific company $150,000 in cash? A Yes, sir.

Q Did you oversee the preparation of the vessels for their voyage to the Pacific coast? A Yes, sir.

Q Upon their arrival at San Pedro on or about December 16, 1910, you took up the operation of the vessels? A Yes.

Q And continued for the five years of the operating agreement? A I did.

Q While they were there what was the run of the vessels? A Well, each ship made two trips a week between San Francisco and San Pedro, which is the port of Los Angeles, and one of which trips went through to San Diego.

Q What is the distance between San Francisco and Los Angeles? A About three hundred and thirty-six nautical miles.

Q And that is how many miles on land? A I don't know, I would have to sit down and figure it out; there are eight hundred more feet to the nautical mile than the statute mile.

Q That is six thousand and eighty feet? A Six thousand and eighty to a nautical mile and five thousand two hundred and eighty to a statute mile.

Q And it is a difference of eight hundred feet? A Yes.

Q What is the distance between San Pedro and San Diego? A About ninety nautical miles.

Q How long did the run take between San Francisco and San Diego? A Well, our running time between San Francisco and San Pedro is about eighteen hours, and about five hours from San Pedro to San Diego, and put in some time, usually five hours south-bound and two hours north-bound, at San Pedro.

Q What competition by rail did the boats have on that run?

Mr. English. I object to that, I do not think that is material.

A They have eight trains a day on the Southern Pacific—

Q Wait.

The Court. I will let him answer.

A Eight trains a day on the Southern Pacific and I think two on the Santa Fe.

Q What is the running time of the trains? A Well, the trains run all the way from thirteen hours to twenty-four.

Q What fares did you receive for the passenger service between San Francisco and San Pedro? A Eight dollars.

Q Eight dollars a passenger? A Yes.

Q Does that include stateroom? A No, sir, staterooms and the meals extra.

Q How much for the stateroom? A A stateroom ranges from one dollar to eight.

Q From one dollar to eight? A Yes.

Q According to size and location, etc? A Yes. Excuse me, staterooms range from two dollars to eight, but you could buy a single berth in a stateroom for a dollar.

Q Is that a single trip or a round trip? A Single trip.

Q What is the character of freight that was carried between those two points? A Well, principally package freight of high class, with some carload business mixed in with it.

Q What rates did you get for freight of that character? A Why freight rates, all told, carloads and all, we averaged on the freight we carried about five dollars and some cents, I think around $5.20 a ton.

Q And the tonnage you carried was what? A Usually averaged,—came pretty nearly being full one way nearly all the time, and northbound the freight is pretty light.

Q The boats would carry how many tons of that class of freight? A They had six hundred ton measurements, but with the line of

freight out there they used to fill up about five hundred tons weight.

Q What was done with the boats when the operating agreement expired December, 1915? A Well, we continued to operate them, or the Pacific Navigation Company had, on the part of the owner, until September first, and then they were turned over on instructions from the Metropolitan Steamship Company to the Pacific Alaska Navigation Company.

Q Was any proposition made to you by the Metropolitan in reference to the renewal of your operating contract? A Yes.

Q Did you accept the proposition? A Oh, we didn't care to renew on the basis of the old agreement, and we wanted to have a modification, and while those modifications were under discussion why the Pacific Alaska people came along and were willing to pay the price and accept the conditions, and so they got it.

Q Did you assist Mr. Robbins in making that deal with the Pacific Alaska and advise him? A Well, I discussed the proposition with him, whether I was of any assistance or not I guess he is the best judge.

Q Has the Pacific Navigation Company any interest in these boats at this time? A In the present operation?

Q Yes. A No, no interest in the boats at all, except such as they have as stockholders in the Pacific company.

Q What was the condition of the boats when you turned them over to the Pacific Alaska in September, 1916? A First class in all respects; they had a greater value of equipment and supplies on them than they had when we took them over, and in a good many ways they were

in better physical condition, were generally, except of course that a ship, like anything else, grows old with age.

Q Are you familiar with the rates of marine insurance that was charged on the Pacific coast on vessels of this class? A Yes.

Q Do you know whether the Harvard and Yale are able to obtain rates that are favorable in comparison with those enjoyed by other vessels of the same class on that coast? A The rates of the Harvard and Yale are lower than vessels of the same class, I think they have the lowest of any ships on the Pacific coast, except the two ships belonging to the Great Northern, the Great Northern and the Southern Pacific, they have a tremendously high valuation, and the underwriters consented to put a little less value on those two for that reason.

Q (*By Mr. Faulks.*) Capain Goodall, except for some delay that there may have been in making the earlier payments under your five-year operating contract with the Metropolitan Steamship Company did the Pacific Navigation Company conform to all the terms of that operating agreement? A It did.

Q With reference to the up-keep of the boats and things of that kind? A In all respects.

Cross examination by Mr. English.

Q Did you ever get any more accurate information about the number of passengers and freight that the Harvard and Yale carried on the Atlantic coast, except what you gained when you walked around on them before they were operated? A They were operating when I counted them.

Q That was in the fall of 1907, was it not? A Yes.

Q Did you ever get any more information besides that which you gathered on that occasion, as to their earnings and capacity? A No, sir.

Q You never operated ships on the Atlantic coast, did you? A No.

Q Except as you sort of guess at the matter you haven't got very much of a basis of experience to found a judgment on, have you? A I don't know, that is for the Court to judge.

Q What is that? A I think that if for the Court to judge, I don't know.

Q Well now, the Court will take care of himself. I want to know whether you ever had any experience in operating on the Atlantic coast on which you could base a comparison of operating conditions as between the Atlantic coast and the Pacific coast? A I just told you I had no experience.

Q Do you say that about the time the Yale and Harvard were being built your company was having the Governor and President built? A The Pacific Coast Steamship Company.

Q That is a competitor of yours? A They aren't now and weren't then, but we did compete with them when we operated the Harvard and Yale.

Q Were you running a line between San Pedro and San Francisco back in 1907? A No.

Q Just think about it. A Yes.

Q What lines were you running at that time? A None.

Q What put it into your head that you would like to run one? A Because I had been connected with one that had been running ever

since I was able to know anything, until two years before that.

Q What line? A Pacific Coast Steamship Company, incorporated by my father.

Q Did you want these ships for your Pacific Coast Steamship Company? A No, I did not; I told you we wanted them to run in competition with the Pacific Coast Steamship Company.

Q Were you going to compete with your father? A My father was dead some years before.

Q Your interest was out of that company then? A Yes.

Q The Pacific Coast Company had the President and the Governor? A The Pacific Coast Company had in 1907 contracted with the New York Ship Building Company to build two ships.

Q Did they build them? A Yes.

Q Did they run them? A Yes.

Q Did they compete with you afterwards, with the Yale and Harvard? A Yes.

Q Between the same ports? A They extended their route further north, they ran as far as Puget Sound.

Q And you did not run north of San Francisco? A No.

Q Did they go down as far as you did? A Yes.

Q As early as 1907 you took this matter up with Mr. Mellen, did you not? A Yes.

Q What imbued you with the idea that Mr. Mellen, of the New Haven Railroad, would like to get rid of those ships? A Like everybody I thought they would like to get rid of competition.

Q As soon as you got here you appreciated the fact that those boats created quite a competi-

tion with the New Haven Railroad? A Yes, but I changed my mind later on.

Q Well, it came to your mind before you saw Mr. Mellen? A Yes.

Q And having sized that situation up you went straight to Mr. Mellen? A No, I didn't go straight to Mr. Mellen.

Q You went to him eventually? A Yes.

Q Did you see Mr. Benjamin Campbell, vice-president of the New Haven about it? A I didn't see him about that; I had known him for a number of years when he was on the Pacific coast, and I went to him to get him to introduce me to Mr. Mellen.

Q You got to Mellen through Campbell? A Well, I was introduced to Mr. Mellen through Campbell, yes.

Q At that time were the Yale and Harvard in operation? A Yes, in the fall of 1907.

Q Mr. Mellen was not adverse to the idea of getting rid of the Yale and Harvard, was he? A He didn't want to talk about it at all, he said he didn't give it a thought one way or the other.

Q Did he say at that time that he was building ships to compete with them? A No; he already had two ships competing with them, he had three ships competing.

Q Those fast freight boats? A Yes.

Q Did he tell you whether they were competing successfully? A He didn't make a confidant of me, no.

Q Did he tell you anything about it? A About his freight boats?

Q Yes. A No.

Q Did he tell you whether they were losing money or making it? A No.

Q Didn't say? A No.

Q But he thought under the existing situation, he then having in operation the three freight boats, that the Metropolitan line would peter out; is that it ? A He said he didn't like the type and style of the Yale and Harvard, and he thought it an extra-hazardous business of running the Yale and Harvard across Nantucket Shoals, and that he hadn't been convinced at that time and didn't think he would be that the public demands required that service.

Q Do you know whether he was convinced later on? A I don't know, he never told me.

Q At any rate, he was willing to talk about the matter later on, was he not? A No.

Q Well, you at least went to him later on, did you not? A Not about having anything to do with the Yale and Harvard; I made a proposition later on to sell him some other property.

Q But the elimination of the Yale and Harvard was involved in your proposition to sell him some other property? A It was not involved in the proposition in any respect, as far as he was concerned; of course I presume as an intelligent man he would know how it would be, he was acquainted with the Pacific coast.

Q He knew if your proposition went through the net result would be to take off the competition of the Yale and Harvard? A Being a man of reasonable intelligence, I suppose he did.

Q And you judged him to be a man of reasonable intelligence? A Yes.

Q And you thought he appreciated your proposition? A I didn't think it would appeal to him particularly after the conversation I had with him in 1907, I didn't think as far as the Yale and Harvard was concerned it would cut much ice.

Q You thought he would be more interested in buying the freight boats? A Yes.

Q As I understand you, after you had some conference with him and the others there they called in Mr. Robbins? A Yes.

Q And the net result of Mr. Robbins' entrance into the matter was that he took the matter up directly with Mr. McKinnon and you and Mr. McGovern? A Yes.

Q And that began in the late summer of 1909? A Yes.

Q That is correct? A That is right.

Q And you had pretty frequent negotiations with him for a while after that? A No, not in that year.

Mr. Ward. With whom?

The Court. Are you referring to Robbins?

Q Yes. A No, I didn't have any negotiations with Mr. Robbins that year.

Q The thing fell flat the next day in Marshall's office? A Yes.

Q But McGovern kept it up, did he not? A Well, McGovern kept in touch with the situation. When you say kept it up, what do you mean?

Q You say that you didn't have any more negotiations with him? A With whom?

Q With Robbins, after that meeting the next day in Marshall's office? A Yes.

Q That is right? A Yes.

Q Then you personally dropped out? A That year, yes.

Q That is what I mean, that year; but McGovern kept on, did he not? A Kept on what?

Q Negotiating with Robbins? A I don't know, I don't think he did.

Henry W. Goodall, cross.

Q Well, we do; the record is here.

The Court. I will strike that remark out.

Q As I understand you, when you got through with that meeting in Marshall's office you thought you were through; is that it? A Yes.

Q And the deal was off as far as you could put it through? A At that time, yes, as far as I could see.

Q Did you start back for the coast then? A Yes, shortly afterwards, I do not remember exactly.

Q Well, how soon afterwards? A Oh, I don't know; you are asking me something that happened ten years ago; I haven't got a diary of every twenty-four hours when I left New York or arrived there.

Q This was you say the late summer or early September. Did you leave during the month of September, or was it cold weather? A I left in a reasonable time, but I had other business in New York; those weren't the only two ships or business in the world that a man might be interested in; I went home at my leisure, and as far as this proposition was concerned I had nothing further to do with it that year.

Q You don't remember whether it was still moderately warm weather or cold when you started for the west?

The Court. I strike that out.

Q Well, was it as late as October when you started home? A I think that other matters delayed me in New York and I think I was here until December, now you speak of it, but I wouldn't be sure about it.

Q You were here until December? A No, I don't say I was here, but the best of my recollection now is that 1909 I was here as late as December.

Q But the original proposition which you put up for the New Haven to purchase the freight boats and the dock was all off, as you understood it, when you left? A Yes.

Q That being so, what occasion did Mr. Mellen have, as late as January 7, 1910, to write you telling you that very same thing, that the proposition was all off? A Well, if that letter is dated in January, 1910, then I didn't go home as early as I thought I did, and instead of going in December I must have gone in January, because I received that letter in New York.

Q I am not concerned now with whether you were East or West when you got the letter; what I want to know is if you regarded the whole thing as off back in September, 1909, why was it necessary for Mr. Mellen away on the following January to write and tell you it was all off? A Well, I don't know; we parted in January, according to that letter, and these negotiations could have been carried on in November and December, I do not remember.

Q Did you ever talk with Mr. Robbins about this letter? A No.

Q Never did? A No. Mr. Robbins wrote to me, if I remember, and told me that the files of Mr. Mellen indicated that such letter had been written, and I think he asked me to send it on to him; that is all I ever heard from Robbins in regard to it; and the reasons assigned for wanting the letter was to put it in the files of this case.

Mr. English. I move that be stricken out.

The Court. I will let it stand.

Q My question was whether you ever talked to Mr. Robbins about this letter? A No.

Q Did you ever talk with Mr. McGovern about this letter? A No, except at the time it was received; I received it here in New York, and we undoubtedly perused it together and probably discussed it in a general way.

Q Did Mr. McGovern tell you that he had a conversation with Mr. Robbins about that letter? A No.

Q You came on then after that, in the summer of 1910, at Mr. McGovern's suggestion; is that right? A Yes.

Q Did you know that he had been in negotiation with Mr. Robbins? A He told me afterwards, when I arrived here, that he had been in touch with Mr. Robbins, but how long or how often I do not know.

Q The thing which moved him to ask you to come on was the negotiation which he had been having with Robbins; is that as you understood it? A Yes.

Q You had a hand in the negotiations after that, too, did you not? A Yes.

Q And that continued from the middle of the summer until things were put in definite contract form in October, 1910, didn't it? A Yes.

Q Mr. Robbins was principally the man on the one side and you and McGovern on the other; that is correct? A Yes.

Q Where were those negotiations with Mr. Robbins carried on? A Principally in the office of the Grand Central depot I think.

Q Here in New York? A In New York.

Henry W. Goodall, cross.

Q That is the office of the New Haven Railroad? A Yes; and then we had some down in McGovern's office, 61 Broad street, I think at that time.

Q You know about the formation of the Pacific company, do you not? A Yes.

Q You were a stockholder in it, weren't you? A No.

Q Your Pacific Navigation Company was a stockholder? A Yes.

Q And one hundred and fifty thousand dollars of the money which you and your associates put in the Pacific Navigation Company was turned over to the Pacific company, was it not? A Yes sir.

Q In other words, you bought stock of the Pacific company with that money? A Yes.

Q That Pacific company was created to finance the sending of the Harvard and Yale to the Pacific coast? A Partly, yes.

Q You know about the making of a second mortgage bond on the Harvard and Yale, don't you? A Yes.

Q That was a part of that scheme to finance the thing, was it not? A Yes, sir.

Mr. Hardin. We were not permitted to go into all this. I haven't any objection.

Mr. English. I am not going into it in any detail.

Q Do you know how much was spent in fitting out the Harvard and Yale to go to the Pacific coast? A I do not, no, sir.

Q Pretty large sum of money?

Mr. Faulks. That has all been testified to.

The Court. I will exclude it.

Q You say Mr. Robbins has no interest in the stock of the Pacific Navigation Company? A None whatever.

Q He is interested in the stock of the Pacific company? A So I understand.

Q You say you have too? A No, I haven't.

The Court. He never said he had.

Q I thought you said that the only interest you had in the lease or operating agreement now in existence between the Metropolitan and the Pacific Alaska Company was as a stockholder in the Pacific company? A Oh, I am in a position like the house that Jack built, I am a stockholder in a company in California that is a stockholder in the Pacific Navigation Company that is a stockholder in the Pacific company.

Q (*By Mr. Ward.*) And the securities in the Metropolitan Steamship Company? A Yes.

Q And when you got to the end of the rope you tied up to the Pacific company? A I didn't get to the end of the rope, I appeared at the other end.

Q Well, whoever is on the other end of the rope fetches up with the Pacific company then? A Yes.

Q Which way was it that the ships were full of freight on your trips out there? A South bound.

Q And you came home early? A No, when we finally got through, we started in with thirty or forty tons north bound, and when we got through we had as high as two hundred.

Q That was not half the capacity of the ship? A North bound about half capacity of the ship, owing to the class of freight, it was more bulky.

Q And did not result in as much money? A Oh, yes, it was perishable freight; not as much as south bound.

Q How about passenger service, equal both ways? A It would vary with the time of the year, certain seasons of the year it would be heavier north bound, and other seasons of the year heavier south bound.

Q What was the class of the passenger travel, tourists or what Mr. Austin has called the hand-bag man? A Well, I don't know; you will have to define the hand bag man.

Q He was known to him as the busy business man that has to go over night from one town to another? A We used to get quite a number of those.

Q And you had tourists besides? A Oh, yes.

Q Was the run longer than the run from New York to Boston? A Yes, about three hours.

Q About three hours longer? A Yes.

Q You said you helped Mr. Robbins or advised him in some respects when you made this lease with the Pacific Alaska Company? A Yes, sir.

Q How long was Mr. Robbins out there on the Pacific coast negotiating that matter? A I imagine two or three weeks.

Q Did he come out first to negotiate with you about a renewal of your arrangements? A Yes.

Q He did? A Yes; that is what he conveyed to me, and I supposed he had.

Q You and he didn't do any business, so he got in with the Pacific Alaska Company; is that it? A Well, Mr. Robbins apparently had his eye on the Pacific Alaska all the time as a possi-

ble proposition, I don't know, but after a while I suggested to him that it would be mutually satisfactory all around if such an arrangement could be made as was entered into.

Q Apparently he came out there with the idea of making some arrangement with the Pacific Alaska? A I do not know that he had that definitely in his mind, but it resulted.

Q Well, apparently, it seemed to be that way? A Well, I think he had it in his mind as a possibility.

Q And you are now his representative or the Metropolitan's representative out there as inspector for those ships, or in some such capacity? A They delegated me to see that the ships are maintained by the present operators and kept up.

Q Do you know Mr. Hough? A Yes, very well.

Q He used to do that during the time of your contract, did he not? A He did that for the American Trust Company, the trustee.

Q He don't do that any more, does he? A Well, I understand, I was notified by Chase that some arrangement had been made whereby my reports to the Metropolitan Steamship Company, duplicates, would be given to the American Trust Company, and the additional cost would be saved.

Q You are practically acting for the Trust company and the Steamship company both? A I judge I am expected to, yes.

Q Did you see this contract between the Metropolitan company and the Pacific Alaska? A I saw it in the rough, I do not say I have seen the final completed copy as signed.

Q Your Pacific Navigation Company owes the Metropolitan some money yet, does it not? A No, not a dollar; it does owe some money, but the amount has been agreed on and is about to be paid.

Q What is it that has been agreed on? A What the balance is has been agreed on.

Q What is that balance? A $114,000.

Q Is your company operating any ships now? A No.

Q Not doing any business? A What company do you mean? Pacific Navigation Company?

Q That is what I am talking about. A No.

Q Not doing any business? A No.

Q When do you expect to pay this $114,000? A Today.

Q Have you got the check in your pocket?

The Court. I will strike that out.

Mr. English. I can see a phase of this case in which I think that question is quite material.

The Court. As to whether he has the check in his pocket?

Mr. English. Not necessarily that, no, but whether he is in a position to pay that money today.

The Court. You can ask him that.

Q How do you propose to pay that money today? A Is that material, your Honor? Do I have to go into my personal plans. I propose to give them a check against my account in the National Park Bank, New York.

Q Have you got in your account $114,000? A I will have sufficient to take care of it.

Q You will have when you draw this check? A Yes.

Q Do you expect to draw that check today? A Yes.

Q And turn the money over today? A Yes.

Q To the Metropolitan Steamship Company? A Yes.

Q To Mr. Chase, the treasurer of it? A Yes.

Q It has not been done yet, has it? A No.

Q When did you come to this agreement on $114,000? A Yesterday.

Q How long since you have been here? A I arrived here Sunday.

Q And you have been in negotiation about this ever since you came? A Well, yesterday is the first opportunity I had to get a hold of Mr. Chase.

Q Have you seen Mr. Robbins since you have been on here? A Yes.

Q Did he participate in the negotiations that resulted in the agreement on $114,000? A Partly, yes.

Q Largely? A I did not say largely, I said partly.

Q He did, whether largely or otherwise? A Yes.

Q (*By Mr. Faulks.*) Captain Goodall, I notice in this lease or rather operating agreement between the Metropolitan Steamship Company and the Pacific Alaska Navigation Company a provision that the boats are to be operated by the Navigation company as the agent of the Steamship company between the ports of San Francisco, San Pedro and San Diego, and also between any of said ports and such other ports on the Pacific coast not south of San Diego nor north of Vancouver, British Columbia, as may be

from time to time agreed upon in writing between the parties hereto. Do you know why that provision was put in the lease? A Well, principally that is a very common thing to do on the Pacific coast.

Mr. English. Is this the Pacific Alaska lease?

Mr. Faulks. Yes.

Mr. English. I object to that.

Mr. Faulks. He had a hand in the preparation.

Mr. English. Very little; he said he advised with Mr. Robbins.

The Court. I will exclude it as immaterial.

Mr. Faulks. I have no further evidence to offer, unless possibly it may be that some of the exhibits which were marked for identification in connection with the taking of the depositions were not offered in evidence. I want an opportunity to look those over; I think they have been put in as far as I desire to offer them, but I want to be certain about that.

Mr. English. Well, I suppose that would work both ways?

The Court. Oh, yes.

DEFENDENTS REST.

Complainants' Depositions.

THOMAS B. McGOVERN, sworn for complainant.

Direct examination by Mr. English.

Q Where do you live? A Pelham, Westchester County, New York State.

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

Q What is your business? A President of the Caloric Company.

Q How long have you been president of that company? A About two years.

Q What was your business in the fall and winter of 1903? A Steamship business.

Q In what capacity were you in the steamship business? A As a principal.

Q Operating what company; by yourself or how? A By myself.

Q Just what was your business in the fall of 1908 in the steamship line? A Buying and selling steamships.

Q Did you operate as a broker at that time? A I did.

Q In the buying and selling of steamships? A I did.

Q The steamship lines? A Yes sir.

Q Were you familiar with the property of the Metropolitan Steamship Company at that time? A I was.

Q And for how long had you known of that line? A For a great many years.

Q At the time that you first knew it, did it operate freight or passenger steamers? A A Freight steamers.

Q And of what time are you speaking of? A When the Whitneys owned the line.

Q The company was controlled by Mr. Whitney? A So I understand.

Q And that was prior to 1908? A Yes.

Q Do you remember when it was that Mr. Whitney parted with his interest in the line? A I don't know.

Q Do you know what interest became dominant in the line after Mr. Whitney got through with it? A No, I do not know that.

Q Do you know whether in the fall of 1908 the Whitney interests were still connected with the line? A I think not.

Q Who was it that did control the line at that that time, if you know? A I am not certain about it; it was a new organization.

Q At that time had the company gone into the hands of receivers, or was it then a going concern? A I think it was about that time that they went into the hands of receivers.

Q And that was the foreclosure of a mortgage as already appears in the federal court A Yes.

Q You knew of that fact? A Yes.

Q Do you remember the names of the receivers? A No, I do not.

Q Did you as a broker undertake any negotiations looking towards the sale of that line or the vessels of that line? A Yes.

Q What time was it when you first began those negotiations? A 1909.

Q At that time did the Metropolitan Line operate freight boats or passenger boats or both? A Both.

Q Do you remember the names of any of the freight boats at that time? A Whitney, Dimock.

Q H. M. Whitney? A Yes.

Q H. F. Dimock? A Yes.

Q Can you name any others? A Two Whitneys.

Q James S. Whitney the other? A Yes, and Winter.

Q Herman Winter? A Yes.

Q Those four freight steamers? A Yes.

Q Do you remember whether the line had any interest in any wharves? A It had an interest in a wharf in Boston.

Q Do you remember the name of it? A No, I don't remember it.

Q India Wharf? A Yes, I think that was it.

Q Do you remember whether it had any interest in any wharves in New York? A Not that I know of, unless they were leased wharves.

Q Do you remember the names of the passenger steamers which the line operated? A Yale and Harvard.

Q And all of those boats, both freight and passenger, operated between what ports? A New York and Boston.

Q What time of the year 1909 did you become interested in the line from the standpoint of a broker trying to make a sale? A I think early in the spring of 1909, winter of 1909.

Q The late winter and early spring of 1909? A Yes.

Q At whose request did you as a broker undertake to bring about a sale? A Assets Realization Company.

Q They were the controlling interest in the line at that time? A Yes.

Q And who in the Assets Realization Company brought the matter to your attention? A

Mr. McKinnon and Mr. Shaw, the vice-president and president.

Q As a result of the matter being brought to your attention by Messrs. McKinnon and Shaw, what, if anything, did you do looking toward a sale? A I interested some parties in San Francisco—Captain Goodall at the head of them.

Q Captain Goodall of San Francisco? A Yes, in the Yale and Harvard.

Q Do you remember Captain Goodall's full name? A H. W. Goodall.

Q What did H. stand for? A Henry W. Goodall.

Q You say he hailed from San Francisco? A Yes.

Q Why was it you went so far from home to interest a purchaser? A Because I had figured on putting those two boats on the Pacific coast in 1907. I then had it up with Seattle parties and brought them to Mr. Morse; he at that time controlled it.

Q Had you known Captain Goodall for some time previous to the spring of 1909? A Yes.

Q What was his business at that time? A He was a member of the firm of Bennett & Goodall of San Francisco.

Q And their business was what? A Shipping business.

Q What particular concern did he represent as a possible bidder or purchaser of the ships? A His own firm and some associates in San Francisco that were going to put money in the business with him.

Q Was any company named at that time? A Not at that time.

Q When was it that you first interviewed or were interviewed by Mr. McKinnon and his associates? A 1909.

Q And was it immediately following that that you got in touch with Captain Goodall? A No, it was prior to that.

Q Prior to what? A Prior to the meeting with McKinnon and his associates.

Q That you got in touch with Captain Goodall? A Yes.

Q And after Mr. McKinnon brought the matter to your attention, you thought of Captain Goodall as a possible purchaser? A I had talked it over with Captain Goodall in San Francisco.

Q When was that? A Prior to that, in the early part of the winter of 1909, and when I came home I saw McKinnon.

Q Prior to your talk with Captain Goodall in San Francisco, you had had some negotiations with the Assets Realization Company people, had you not? A Only in a general way, finding out facts in regard to the matter.

Q But you knew then that they had this property for sale? A Yes.

Q And in pursuance of that you talked to Captain Goodall in the West? A Yes.

Q And then when the matter revived again in the spring, you took it up with him again? Yes.

Q What was the next step in the matter; did Captain Goodall come on here? A I had other negotiations going on at the same time.

Q With reference to this new Metropolitan Line? A Yes.

Q What were those negotiations? A The Assets Realization Company wouldn't sell the Yale and Harvard alone and wanted to sell the entire company, and I had to find another purchaser for the balance of the line.

Q When you speak of the entire company, do you refer to the physical assets, like the boats or stock? A The physical assets, as it turned out afterwards, the securities of the company.

Q That controlled the assets? A Yes.

Q What efforts did you make to find another purchaser? A I took the matter up with a friend of mine in the New Haven Road and wrote him a letter about it and asked him if he would find out if they would be interested in the purchase of the Metropolitan Line outside of the Yale and Harvard.

Q In the New Haven Road? A Yes.

Q When you say that part of the line outside of the Yale and Harvard, you refer to the freight boats and dock property that you referred to? A Yes.

Q Who was the friend in the New Haven that you took the matter up with? A One of the vice-presidents of the road—an old friend of mine.

Q Do you remember his name? A Yes.

Q Will you tell us? A Mr. Campbell.

Q Do you remember his first name? A Ben.

Q Benjamin Campbell? A Yes.

Q And he was one of the vice-presidents of the New Haven Railroad? A Yes.

Q When you say the New Haven Railroad, you refer to the New York, New Haven & Hartford Railroad Company? A Yes.

Q At that time did you know that the New York, New Haven & Hartford Railroad might be interested in this purchase? A I wrote to Mr. Campbell in order to find that out.

Q Did you receive a reply from him? A I did.

Q To what effect? A I think the first reply was to the effect that they were not interested, and later I got a telegram from him, saying that they might be interested on the basis that I proposed.

Q Then following the receipt of that telegram, what, if anything, did you do? A In relation to that side of the subject?

Q Yes. A I saw Mr. Mellen two or three times.

Q Who is Mr. Mellen, what is his name? A President of the—

Q Charles A. Mellen? A Yes, president of the New Haven Road.

Q Who else in the New Haven Road did you take the matter up with? A No one at that time.

Q What is the time you are speaking of when you say that you got this telegram from Mr. Campbell? A I think that telegram was dated February, 1909.

Q Have you got the telegram yet? A My counsel has it.

(Telegram produced.)

Q I show you a telegram which your counsel produces, dated May 27, 1909, addressed "T. B. McGovern, 25 Broad St., New York," and signed "B. Campbell"; is that the telegram you referred to? A Yes, sir. Will you correct the statement I made about February, 1909?

Q You previously said you thought it was in February; you correct that now to May? A Yes, referring to the date of the telegram.

Q And is the Campbell whose name appears on this telegram the vice-president of the New Haven Road that you referred to? A Yes.

Q And this is the telegram that you received from him? A Yes.

Mr. English. I offer the telegram in evidence.

Mr. Faulks. We object to the receipt of the telegram in evidence, upon the ground that it and its contents are irrelevant, immaterial and incompetent.

Mr. Ward. The same objection is made on behalf of the Pacific Navigation Company, and the further objection that it is irrelevant and incompetent, as dealing with matters between parties other than the defendant, Pacific Navigation Company.

(Telegram referred to marked Exhibit C. 26.)

"WESTERN UNION TELEGRAM.

May 27, 1909.

New Haven Depot Ct. via San Francisco Cal.

To T. B. McGovern,

25 Broad St., N. Y. C.

Are you in shape to renew last proposal, we to take the freight equipment and wharf for 1/3 of total consideration. This tentative only.

B. Campbell."

Q Do you know why this telegram was sent you via San Francisco? A It was sent to my office in New York and they repeated it, I think, to San Francisco.

Q You were in San Francisco at the time? A I was.

Q I see that this telegram refers to some last proposal; what was that proposal?

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

A It was a proposal for a sale of the assets of the Metropolitan Steamship Company other than the Yale and Harvard.

Q That proposal had been made to whom? A It was suggested to Mr. Campbell by me.

Q Mr. Campbell of the New Haven? A Yes.

Q And that proposal was to the effect that you sell the freight boats and the wharf equipment, but not the Yale and Harvard? A Not the Yale and Harvard.

Q In that proposal was there any suggestion of the sale of the securities which controlled the company? A Oh, no, it hadn't got that far.

Q Just the physical assets? A Yes.

Q Was that proposal in writing or oral? A I think it was in a letter that I sent to Mr. Campbell.

Q Have you a copy of the letter? A No, I have not.

Q You didn't keep any copy? A I may have made it; I made a copy, but I couldn't find it, unless my counsel has got it.

Mr. C. L. Hoguet. We have got it.

Q Do you remember the date of that letter, with reference to this telegram dated May 27, 1909? A No, I didn't know the date; it was some time prior to that.

Q Was it during the year 1909 or did it relate back to 1908? A I cannot say for certain.

Q Was it prior to October, 1908? A I think probably about that time.

Q Did you get a reply from Mr. Campbell to that letter? A Yes.

Q Is that among your papers? A I think my counsel has it.

(Letter produced.)

Q I show you a letter produced by your counsel, dated October 24, 1908, signed B. Campbell and addressed to you; is that the letter that you refer to? A Yes.

Q And this letter of October 24, 1908, was in reply to the proposal which you had submitted during October, 1908, and which is the proposal referred to in the telegram, Exhibit C. 26, as the last proposal? A Yes, that is correct.

Mr. English. I offer in evidence the letter of October 24, 1908, just referred to.

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

(Marked Exhibit C. 27.)

"THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

Traffic Department.

New Haven, Conn., October 24th, 1908.

Office of
Vice-President.

CONFIDENTIAL

Mr. Thos. B. McGovern,
No. 25 Broad Street,
New York City.

My dear Tom:—

Your letter of the 23rd received.

I put up to Mr. Mellen the proposition you submitted to me the day following my call at your office. He thought that the price of the freight steamers was about four or five hundred thousand dollars greater than their actual worth, and did not seem deeply interested. I allowed the matter to drift, thinking that possibly some new development might arise which would enable me to give you some encouragement, but

nothing of the kind has transpired, and this morning I asked Mr. Haskins to 'phone you to the effect that our people did not seem interested.

Mr. Mellen is not here today, but probably will be at his office early next week, and I will take that opportunity to revive the subject and ascertain if he has anything further to say, advising you accordingly.

With kindest regards,

Yours as ever,

B. CAMPBELL."

Q It appears from the telegram, Exhibit C. 26, that Mr. Campbell suggested that he might be interested in taking the freight equipment at one-third of the total consideration. Did that refer to one-third of the total consideration which you had named in your October proposal? A I think so.

Q Looking at this letter, Exhibit C. 27, to refresh yourself, do you remember what the amount of the consideration was which you named in October of 1908? A Yes.

Q What was it? A $1,500,000.

Q And that was for the freight boats which you previously enumerated and the wharf property, is that correct? A Yes.

Q And it appears from this letter now, Exhibit C. 27, that Mr. Mellen thought that that price was some four or five hundred thousand dollars too high. Who is the Mr. Mellen that is referred to there? A The president of the New Haven Railroad.

Q After the receipt by you of this letter of October 24, 1908, Exhibit C. 27, did the matter drop until it was revived in the spring of 1909?

A Practically, I was in California, after the receipt of that letter, for some time.

Q So that after you got this telegram of May 27, 1909, Exhibit C. 26, did you get in touch with Mr. Campbell? A No, Mr. Campbell had nothing more to do with it than those letters.

Q Whom did you get in touch with in the New Haven Railroad? A Mr. Mellen.

Q And when next after the receipt of this telegram of May 27, 1909, did you see Mr. Mellen? A Sometime during the summer following.

Q How long did you remain in San Francisco, or on the Pacific Coast, after you got this telegram? A I missed that telegram in San Francisco, as I recall it: I was on the way home and it was returned to New York.

Q Do you remember how long after that it was that you got in touch with Mr. Mellen? A I don't remember; it might have been a month or so.

Q Did you in the meantime get in touch with anybody else in the New Haven Railroad? A No.

Q You went directly to Mr. Mellen? A Yes.

Q Where did you have your first talk with him? A As I recall it, in New Haven.

Q You went to New Haven to see him? A Yes.

Q Was that by appointment, or did you just take a chance on seeing him? A I don't recall whether it was an appointment or not.

Q Who was present at the meeting which you had with him in New Haven; the first meeting, I am speaking of? A I don't recall that.

Q Where was it held? A In the offices there in New Haven.

Q His privante offices? A I think Mr. Campbell took me in and introduced me and left me to talk to him.

Q And you and he talked alone about the matter? A I think so.

Q What was said at that time with reference to the possible purchase by the New Haven interests of these freight boats? A Only a general conversation.

Mr. Ward. Same objection.

Mr. Faulks. We make the same objection, and the further objection that anything that may have been said at that interview is not evidential against the defendants or any of them.

A (Continuing) A general conversation on that subject.

Q With reference to the freight properties? A Yes, and a statement that I had people on the Pacific Coast who were interested in taking the Yale and Harvard.

Q You told him that? A I told him that.

Q Did that fact interest Mr. Mellen or not? A I don't believe he expressed any opinion about it.

Q I suppose you went there for the purpose of trying to make a sale? A Yes.

Q And the property you had for sale at that time was what? A The assets of the Metropolitan Steamship Company.

Q That included what? A All the freight ships and wharf in Boston and Yale and Harvard.

Q You also offered him the Yale and Harvard at that time? A No, I told him that I had purchasers for the Yale and Harvard and I wanted him to buy the balance of the property.

Q You thought at that time that you could or had practically completed a sale of the Yale and Harvard? A No, I hadn't completed the sale, but I had purchasers in view who were interested in the purchase of these two ships.

Q You had hopes that you could complete the sale? A More than hopes.

Q And that was to Captain Goodall? A Yes, and his associates.

Q So at that time you did not try to sell to the New Haven interests the Yale and Harvard? A No.

Q Did anything definite happen as between you and Mr. Mellen at that time with reference to the purchase of the freight boats? A No.

Q When was the next time after that you saw Mr. Mellen? A I don't recall the interviews after that, except the final one that I had with him.

Q How long after the first one did you have the final interview? A Three or four months.

Q Do you remember where it was held? A Grand Central Station.

Q Do you remember who was there? A There were a number of gentlemen there.

Q Do you remember the names of any of them; was Mr. Mellen there, for one? A He was.

Q Who else? A Mr. Robbins.

Q What is his name, Edward D. Robbins? A Yes.

Q Did he have any connection with the New Haven Railroad? A I understood he was general counsel.

Q Who else was there? A Mr. Mellen introduced me to all of them; I don't recall their names.

Q Do you remember whether he introduced them by their titles or officers in the company, in addition to their names? A No, I am sure he didn't.

Q Do you remember whether Mr. Ledyard was there, Lewis Cass Ledyard? A Yes.

Q You know him? A I was introduced to him at that time.

Q Can you remember any other names? A No, not for certain.

Q Was your friend, Mr. Campbell, there at that time? A No.

Q Do you know whether the gentlemen whom you met besides Mr. Mellen and Mr. Robbins were directors of the company? A I have no knowledge of it; I assumed that they were.

Q Why did you assume that? A Locality and conversation and so forth.

Q Do you happen to know whether those gentlemen constituted the executive committee of the Board of Directors? A No, I don't know that.

Q How many of them were there there? A Five or six.

Q Do you remember whether you were introduced to this or that man as a director of the road? A No, I am quite sure I wasn't. It was quite an informal meeting; I was introduced to all of them.

Q What happened at that meeting between you and these gentlemen?

Mr. Ward. I make the same objection to the entire line of conversation at that meeting.

Mr. Faulks. We make the same objection to whatever may have happened at that

meeting, as we did to the previous meeting with Mr. Mellen referred to by the witness.

A I took Captain Goodall with me and we explained to Mr. Mellen and the other gentlemen—

Mr. Faulks. Won't you state what was said?

A (Continuing) We stated to Mr. Mellen and the other gentlemen that we had a proposition from the Assets Realization Company to sell the entire assets of the Metropolitan Steamship Company, and that Captain Goodall, with associates of his, was prepared to buy the Yale and Harvard, and I submitted the proposition and asked whether they would buy the other assets of the Metropolitan Steamship Company.

Q What was said in reply to that suggestion of yours, and who said it; who did the talking for the New Haven interests? A Mr. Mellen at first did the talking, and said that the proposition seemed like a good one, but the final word was said by Mr. Robbins, and that was, that he wanted time to think it over before closing it. He said hold on, he wanted to think it over.

Q What else did Mr. Mellen say then that the proposition seemed to be a good one? A I don't recall the entire conversation. If I may be allowed to say what my impression was, I can state that they all seemed very favorable.

Objected to.

Q If you cannot repeat word for word, you can give the gist of the conversation. A I cannot give the gist of the conversation.

Q How long did the conference last? A I should think half an hour or three quarters.

Q And you say the concluding part of the conversation took place between you and Mr. Robbins? A Not between me and Mr. Robbins, between Mr. Mellen and Mr. Robbins.

Q And what effect was that conversation? A Mr. Robbins said, "Hold on, I want to look into this; I don't want to close anything now."

Q Do you know whether Mr. Mellen gave Mr. Robbins any instructions in reference to preparing a letter accepting the proposition, or anything of that character? A Yes, he did, and that drew forth that answer.

Q What did Mr. Mellen say? A Mr. Mellen told Mr. Robbins to prepare a letter along the lines that we had discussed, and give it to me.

Q Did you request any letter at that conference? A Yes.

Q What did you request? A I requested a letter of acceptance of the terms from them.

Q From whom did you request the letter? A From Mr. Mellen.

Q What did Mr. Mellen say to Mr. Robbins in reference to that request of yours? A He told him to prepare such a letter.

Q What were the terms which you desired a confirmation of? A That they would purchase the property at a certain price.

Q Was the price named? A Yes.

Q And when Mr. Mellen said to Mr. Robbins to prepare such a letter, what did Mr. Robbins say? A He said to hold on, he wanted to look into it; he wanted to think it over.

Q Did he say what feature of it he wanted to think over? A No.

Q Was any discussion indulged in by Mr. Robbins or anybody else with reference to any

legal difficulties in the consummation of the deal? A Not in my presence.

Q But Mr. Robbins said he wanted to think the matter over? A Yes.

Q Was that the last time you saw Mr. Mellen in the matter? A Yes.

Q After that did you see Mr. Robbins further in the matter? A After that, either Captain Goodall, or Captain Goodall and myself jointly—I mean to say we received a letter either addressed to Captain Goodall personally or to him and me jointly, from Mr. Mellen, withdrawing from the negotiations.

Q Before you got that far did you have any negotiations with Mr. Robbins looking toward a consummation of the deal? A Yes.

Q When after the interview at the Grand Central with Mr. Mellen and the other gentlemen did you next meet Mr. Robbins in the matter? A I met him almost continually from that time on.

Q For how long? A Up to about December.

Q That is, from sometime in the summer of 1909 until December? A After this meeting.

Q The meeting was held when? A I don't recall the date of the meeting.

Q In the summer or early fall? A Summer or early fall.

Q Where did you meet Mr. Robbins in this matter? A At his office in the Grand Central Station.

Q What was the object or gist of the negotiations between you and Mr. Robbins at that time, during that period? A Mr. Robbins told me that he had other purchasers in view outside of the New York, New Haven and Hartford that

he might interest in the proposition, and I was carrying that along with him on those lines.

Q Did he say who those purchasers were? A No, not at that time.

Q Did he disclose to you whether they were identified with the New York, New Haven and Hartford interests or not? A He told me they were not.

Q How long did those negotiations keep up, later than December? A No.

Q What is your recollection as to the last time you saw Mr. Robbins in the matter? A With reference to this matter?

Q Yes. A When I took him down to the Assets Realization Company's office.

Q You haven't told us about that. Did you take him down to the Assets Realization Company's office? A Yes.

Q When was that in the transaction? A That was after Mr. Mellen had finished with it and when I had taken it up with Mr. Robbins.

Q How did it come about that you took Mr. Robbins down to the Assets company's office? A We had had difficulty in coming to satisfactory terms with Mr. McKinnon, and I had reported what the difficulties were to Mr. Robbins, and he suggested that I take him down to the Assets Realization Company's office and introduce him to them and let him carry it on himself.

Q Directly? A Yes.

Q Did you do that? A I did that.

Q When was that with reference to the receiving of the letter addressed either to you or to you and Captain Goodall jointly, before or after that? A That was before I took Mr. Robbins down there. I got that letter first.

Q Have you got that letter with you? A No, I think Captain Goodall has got that letter.

Q Did you introduce Mr. Robbins to Mr. McKinnon? A Yes.

Q Where did that introduction take place? A In the Assets Realization Company's office, 25 Broad street.

Q Do you remember approximately when that was? A I think that was in December, 1909.

Q And did you stay at the interview which subsequently followed or not? A Only a few minutes. Mr. Robbins I think said at the time that he would take the matter up with Mr. McKinnon, and Mr. McKinnon was agreeable. I had seen Mr. McKinnon and made arrangement to have them meet at that time, and he expressed his willingness to go on with the negotiations with Mr. Robbins.

Q So Mr. Robbins and Mr. McKinnon were going to arrange the details of the sale which you had brought about? A That was it.

Q At the time that you introduced Mr. Robbins to Mr. McKinnon, was anything said about the sale of the securities and stock as opposed to the physical assets? A Yes; long before that we got to a point where we were discussing the securities and not physical assets.

Q Who are "we"? A Myself and Mr. McKinnon.

Q How long before this introduction of Robbins to McKinnon by you had you and Mr. McKinnon discussed the sale of the securities as opposed to the sale of the physical assets? A That was before my conference at the Grand Central Station.

Q And what was the suggestion which Mr. McKinnon made with reference to that? A Mr. McKinnon agreed to sell a million dollars of the bonds, all of the stock, about a million dollars of ten year notes, $500,000 6% two year notes.

Q And you say that suggestion was made to you by Mr. McKinnon before you had this final meeting with Mr. Mellen in the Grand Central? A Yes.

Q At the meeting in the Grand Central with Mr. Mellen and the other gentlemen, was the subject of the sale of the stock and other securties discussed? A No, not quite that way at that time.

Q How was it discussed? A We had that proposition from Mr. McKinnon to sell all those securities, and I was asking the New Haven Road to agree to buy the ships—the other ships, the freight ships and wharf, at a certain price, and give me a letter to that effect, and I was going to use that letter to finance the whole deal and buy the securities from the Assets Realization Company, and separate the two parts of the property, turning over to the New Haven their part, and the California interests their part.

Q So that you hoped to personally take over the assets, and then having done that, parcel out the physical property—you hoped to personally take over the securities and stock and then to parcel out the physical property among these various purchasers; was that it? A Not personally; I would have had people do it.

Q Your interests? A Yes.

Q You were acting as broker? A Yes, I was acting as broker.

Q When I say "you," I mean the interests you represented. A Yes.

Q And those interests that contemplated the taking over of the securities at that time were Goodall and his crowd? A No, I expected to get New York people to handle it temporarily.

Q In connection with this suggestion of Mr. McKinnon as to the terms or securities which he would turn over, was any memorandum in writing made? A Yes.

Q I show you herewith a sheet of paper, having at the head of it printed "McGovern & Donnell, 25 Broad Street, New York," and then some lead pencil memoranda; is that the letter paper of your firm at that time? A Yes, the letter paper I was using at that time.

Q You are the man referred to as Thomas B. McGovern on that paper? A Yes.

Q In whose handwriting is the word "Offer" and then a series of figures? A All of those are in my handwriting, except the $850,000 and these figures on this side (indicating), on the extreme righthand side of the paper.

Q So that with the exception of the figures $850,000 on the extreme lefthand column and all of the figures in the extreme righthand column, the balance is in your handwriting? A Yes.

Q In whose handwriting are the figures $850,000 on the lefthand column and the various figures on the extreme righthand column? A Mr. McKinnon's.

Q And you wrote the word "Offer"? A Yes.

Q So that the word "Offer" and the figures which are in your handwriting is the proposition you submitted to Mr. McKinnon? A

The proposition I tried to get him to agree to permit me to submit to the other people.

Q And the figures which he made were what? A What he was willing to take.

Mr. English. I offer in evidence the memoradum referred to.

Mr. Ward. I make the same objection.

Mr. Faulks. We object on the ground that the paper and its contents are irrelevant, immaterial and incompetent and as not being evidential against the defendants, Metropolitan Steamship Company and its directors.

(Marked Exhibit C. 28.)

"Thomas B. McGovern Arthur C. Donnell

McGOVERN & DONNELL

25 Broad Street, New York

Cable Address Sondonnell Telephone 966 Broad

For $ 500,000	1st Mtge. Bonds	@ par	$ 500,000	$ 500,000
500,000	" "	@ 80	400,000	400,000
500,000	6% notes		500,000	490,000
3,000,000	Stock			
850,000	10-year notes		250,000	510,000
			$1,650,000	$1,900,000

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1900000"

Q This was a part of the negotiations which you and McKinnon had from time to time in this matter? A Yes.

Mr Faulks. I make the same objection.

Mr. Ward. Same objection.

Q This was, I believe, discussed between you and Mr. Kinnon before you had the final meeting with Mr. Mellen? A Yes.

Q And what discussion, if any, took place at that meeting at the new Grand Central Station with reference to the sale of the securities to the New Haven? A Nothing more than I have testified to before.

Q How many meetings did you have with Mr. Robbins and Mr. McKinnon with reference to the matter? A Jointly?

Q Yes. A Only one.

Q How many meetings were there which you and Mr. McKinnon had where Robbins was present? A Only one.

Q And that was the day you introduced him? A Yes.

Q And that conference, I think you said, lasted about half an hour? A A good deal less than that—ten minutes—an introduction.

Q At that time was anything said about the taking over of the property by either the New Haven Railroad or any of that company's interests? A No, not in my presence.

Q Was anything mentioned about the New England Navigation Company, for example? A No.

Q Or the Eastern Steamship Company? A We didn't go into a discussion of the matter at that time.

Q When was the New England Navigation Company first mentioned in the matter, to your knowledge? A It was never mentioned to me.

Q Didn't Mr. Robbins suggest to you that the transfer might be worked out that way, namely, the property being taken over by one of the New Haven's other companies, such as the New England Navigation Company or the Eastern Steamship Company?

Mr. Ward. Objected to as leading.

A I don't recall that he did.

Q In the discussion between you and McKinnon with reference to the sale by McKinnon's company of the securities, was anything said about the sale of those securities carrying with them all of the physical property, such as both the freight boats and the passenger steamers? A I understood that.

Q That was understood? A Yes.

Q That that turned over with it the entire assets of the company? A Yes.

Q You said, I think, that the introduction of Robbins to McKinnon by you took place in December, 1909; did you have any correspondence with Mr. Robbins after that date? A I had considerable correspondence with him off and on, making appointments, &c.

Q Do you remember whether Mr. Robbins was interested in securing the purchase of additional freight boats to those owned by the Metropolitan Line at that time?

Mr. Faulks. Objected to as immaterial.

Mr. Ward. Same objection.

A I think I offered him some freight boats.

Q That was to increase the capacity of the line after taking it over? A I didn't know for what purpose; possibly that.

Q I show you a carbon copy of a letter addressed to Mr. E. D. Robbins, which is handed me by your counsel, dated January 19, 1910; is that a copy of a letter which you wrote at that time? A Yes.

Q This is a copy of the letter which you wrote? A Yes.

Mr. English. I offer it in evidence.

Mr. Faulks. I object to it on the ground that it is immaterial, incompetent and irrelevant.

Mr. Ward. Same objection.

Witness. That has nothing to do with this matter. I do not think the correspondence should go in; I am willing to answer any questions you ask me.

(Marked Exhibit C. 29.)

"January 19th, 1910.

Mr. E. D. Robbins,
N. Y., N. H. & H. R. R. Co.,
New Haven, Connecticut.

Mr. Dear Mr. Robbins:

I looked over the S. S. SENECA yesterday, and think she would be very suitable for freight business between here and Boston. She has been running to Boston and her side ports fit the wharfs there exactly.

She is well equiped for handling general cargo having four side ports on each side, besides a big over all hatch forward. She runs on about 30 tons of coal at 10½ knots, and from that up to 50 tons for a higher speed, 14 knots.

From what I learn here as to the other matters, I think it would be advisable to show some earnestness in the matter of having the other two vessels changed to passengers ships. There is to be a dinner tomorrow night of parties who were interested heretofore in the Metropolitan S. S. Co., and I have no doubt that the entire question will be discussed at that time in a quiet way. Mr. Englis is to be guest at that dinner.

Very truly yours,"

Q Who is the Mr. Englis mentioned in that letter? A Charles F. Englis, who built the Harvard and Yale.

Q Did the dinner referred to in that letter have anything to do with the negotiations which were then pending with reference to the sale of the Metropolitan interests? A No.

Q On the same date you also wrote Mr. Robbins another letter, didn't you? I show you a letter dated January 19, 1910, addressed to him; is that a copy of a letter which you sent? A Yes.

Q With reference to the proposed operation of the Harvard and Yale on the Pacific Coast; is that correct? A Yes.

Mr. English. I offer that letter in evidence.

Mr. Faulks. Same objection.

(Marked Exhibit C. 30.)

"January 19th, 1910.

Mr. E. D. Robbins,
N. Y., N. H. & H. R. R. Co.,
New Haven, Connecticut.

Dear Sir:—

With reference to the proposed operation of the S. S. YALE and HARVARD between San Francisco and San Pedro (Los Angeles), I beg to advise that the present transportation facilities between these two cities is as follows:

By Rail: The Southern Pacific Railroad operates two lines, one through the San Joaquin Valley, known as the Valley route, and the other along the seacoast, known as the Coast Line. On the former there are two through trains daily each way, and on

the latter four through trains daily each way. The average number of passengers carried daily each way is estimated at 500, although I have had estimates as high as 650.

By Water: The Pacific Coast Steamship Company gives a service by their two best steamers, the GOVERNOR and the PRESIDENT, of four sailings each way per month, and by their steamer SANTA ROSA one sailing each way per week. The Alaska Pacific Steamship Company make two sailings each way per month with their steamer ADMIRAL SAMPSON, then there are a number of freight vessels, known on the coast as steam schooners, with limited and cheap character of passenger accommodations. This fleet averages about three sailings per week.

An actual record of the steamship passenger business (exclusive of that carried on the above freight steamers) from October 4, 1909, to January 10, 1910, gives an average of 2,955 passengers per week each way, or 422 passengers each way daily. Therefore, the total passenger business moving between these two cities by rail and water combined would average 925 passengers each way per day. In our estimates of the business for the S. S. YALE and HARVARD, we figured on 400 passengers each way four times per week, which we considered conservative for the following reasons:

(a) The speed, comfort and elegance of these vessels far surpass that of any other vessels employed on that run.

(b) The difference in time between these vessels and the rail would be only a few hours. The distance by water is 366 nautical miles, against 484 statute miles by the Valley Line and 475 statute miles by the Coast Line.

(c) The present rates of fare by the existing lines are as follows: Rail $14.00. Passenger steamers, $11.15 first-class. Freight steamers, $5.00. We figured on a rate of $5.00 so as to meet any competition.

(d) The population of these two cities is rapidly increasing. The present population of what might be called Greater San Francisco, that is, San Francisco and the Bay cities, is considered over a million, while the population of Los Angeles and its tributaries is very close to a half million. There is also not less than 50,000 tourists in Southern California annually.

The cheap fuel oil produced in California together with the climatic and sea conditions on this route lend themselves to economical operation as well as to the maintenance of a uniform schedule throughout the entire year. The passenger business during the winter months is increased by the tourist travel, while in the summer it is added to by the attraction that a pleasant ocean trip has for the residents of the hot valleys of the State. There is no doubt that these vessels properly advertised would create a large business for themselves which does not now exist.

The freight business is increasing every year. The rates are quoted according to

Western classification. One ship of the Pacific Coast Steamship Company carried on 31 consecutive trips 24,760 tons of freight, the earnings for which amounted to $102,752.35, showing an average freight rate under the classification of $4.15 per ton.

Very truly yours,"

Q I see in this letter, Exhibit C. 30, you advise Mr. Robbins quite fully of the transportation facilities and other data with reference to the operation of the Harvard and Yale on the Pacific coast? A Yes.

Q What was Mr. Robbins' interest in the operation of the Harvard and Yale on the Pacific coast?

Mr. Ward. Objected to on the ground that it is hearsay, and the witness cannot know, and also on the ground that it is immaterial, irrelevant and incompetent.

Mr. Faulks. We join in that objection.

A I was endeavoring to incite his interest.

Q You wanted to incite his interest? A Yes.

Q For what purpose? A For a purpose that might transpire later in connection with obtaining those two ships.

Q You thought if you got control of those two ships you might be able to sell them to him? A No.

Q Or to his interests? A No.

Q Then what was the object of inciting Mr. Robbins' interest? A That he might help me to get them for purchase or charter from people who did own them at the time.

Q Mr. Robbins replied to those two letters of the 19th, under date of January 20th, 1910, to you? A Yes.

Q And the letter of that date is the letter which you received from his office? A Yes.

Mr. English. I offer that letter in evidence.

Mr. Faulks. We make the same objection.

Mr. Ward. The same objection, and the additional objection, that the signature is not identified, and it appears it was not signed by Mr. Robbins.

Q You received that in the ordinary course of mail, did you? A I did.

(Letter of January 20, 1910, marked Exhibit C. 31.)

The New York, New Haven and Hartford Railroad Company. Law Department.

New Haven, Conn., January 20, 1910.

Thomas B. McGovern, Esq.,
25 Broad Street,
New York City.

My Dear Mr. McGovern:—

I have been laid up for a week with tonsilitis.

I do not think it is worth while to pay $25.00 to the Clerk of the Court for information that I can get for nothing. He is overanxious to give his stenographer a job.

I have received your letters of the 19th, and have read them with very great interest.

I hope to be out and able to attend to business again next week.

Very truly yours,

EDWARD D. ROBBINS, K."

RECESS.

Q You had negotiations from time to time after January 20, 1910, with Mr. Robbins, did you not? A That was in relation to the Yale and Harvard.

Q Subsequent negotiations? A Yes.

Q When did negotiations with Mr. Robbins with relation to the Yale and Harvard begin? A Not seriously until the summer or fall of 1910.

Q Previous to the point where they assumed a serious aspect, as you express it, what had transpired between you and him with reference to the Yale and Harvard? A Nothing.

Q Simply discussed the possibility of his interests taking it over? A Yes, and gave him some information about the business on the Pacific coast.

Q Do you remember having a conversation with Mr. Robbins in April, 1910? A No, I don't remember that.

Q I show you a letter on the letter paper of the New York, New Haven & Hartford Railroad Company, the Law Department, dated April 2, 1910, purporting to be signed "Edward D. Robbins K;" do you remember getting that letter? A I don't remember this particular letter; I presume I did receive it.

Q He wrote you a number of letters of this general character, didn't he, making appointments and what-not? A Yes.

Q And this was one of them? A Yes.

Mr. English. I offer in evidence the letter of April 2, 1910.

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

(Marked Exhibit C. 32.)

"The New York, New Haven and Hartford Railroad Company. Law Department.

New Haven, Conn., April 2, 1910.

Thomas B. McGovern, Esq.,
25 Broad Street,
New York City.

Dear Sir:—

At your convenience I would like to see you some time when I am in New York. I shall probably be there the latter part of the coming week.

Very truly yours,
EDWARD D. ROBBINS, K."

Q What was it that brought the matter of the Harvard and Yale to a serious discussion as between you and Mr. Robbins? A He told me that he didn't think they were satisfactory on the run they were on.

Q What run was that? A Boston and New York.

Q He didn't think they were satisfactory as between Boston and New York? A Yes.

Q At that time had the Metropolitan Company been sold by the Assets Realization Company people? A Yes.

Q When did that sale take place? A February or March, 1910.

Q And do you remember in connection with that sale what was sold, whether physical assets or stock and securities? A I wasn't present at the closing of that sale.

Q You knew, however, of the fact that the sale had taken place, didn't you? A From common report.

Q Do you know whether after that sale, namely, about the first of March, 1910, the Metropolitan Company continued to operate the freight boats? A I believe they did.

Q What about the Harvard and Yale? A They operated the Harvard and Yale, too.

Q How long was it after that date in March, 1910, that Mr. Robbins stated to you that the operation of the Harvard and Yale was not satisfactory? A I think it was in August or September.

Q The fall following? A Yes.

Q And where was it that you had the conversation with him with reference to that? A I don't remember the exact place, possibly up in his office.

Q At New Haven or New York? A New York.

Q Do you remember how it was that you happened to be there; did he send for you? A I don't recall I saw him very often and I haven't in mind any particular interview at which that conversation took place.

Q That was the beginning of a serious consideration on his part of disposing of the Yale and Harvard, is that correct? A Yes.

Q And what was it that he said with reference to sending them to the Pacific coast? A He said that he could introduce me to the people at that time in charge of them and I could take the matter up with them.

Q Who were the people at that time in charge of them? A Mr. Nicholson.

Q This gentleman here, Mr. Douglas Nicholson? A Yes.

Q Is that the first time you met Mr. Nicholson? A Yes.

Q And did he in fact introduce you to Mr. Nicholson? A I don't know whether he personally, or whether Mr. Kelly, the secretary, did.

Q Who is Mr. Kelly, the secretary of Mr. Robbins? A Yes.

Q Do you remember Kelly's first name? A No.

Q Where did Mr. Kelly have his headquarters? A He travelled around with Robbins between New York and New Haven.

Q Did Mr. Kelly take you to Mr. Nicholson's office? A I said I didn't remember whether it was Mr. Kelly or Mr. Robbins.

Q One or the other? A One or the other either took me to his office, or I met him up at Mr. Robbins' office, I am not sure which.

Q At any rate, you were introduced to Mr. Nicholson by either Mr. Kelly or Mr. Robbins, is that correct? A Yes.

Q And following that introduction what ensued between you and Mr. Nicholson? A We discussed the terms of the charter for the Yale and Harvard to go to the Pacific coast, papers were drawn up—lease drawn up.

Q You say "charter"; you mean the lease or agreement of hiring? A Lease, the renting of the boats.

Q That was discussed between you whereabouts? A I don't recall that; it may have been in Mr. Nicholson's office.

Q Do you know where his office was at that time? A Madison avenue, Madison Square.

Q And you discussed with him the terms of the charter or lease of the Harvard and Yale for use on the Pacific coast? A Captain Goodall and I discussed it with him, yes, sir.

Q And was there a formal document signed to that effect? A Yes.

Q Between what parties? A Between the Pacific Navigation Company, the company that was formed at that time, and the Metropolitan Steamship Company.

Q When was the Pacific Navigation Company formed? A October, 1910.

Q Were you interested in the incorporation of that company? A I assisted in it.

Q You were one of the parties in interest? A No; I didn't put any money in it.

Q You were interested in getting it organized? A Yes.

Q I show you a certified copy of the certificate of incorporation of the Pacific Navigation Company, certified to by the Secretary of State of New Jersey, the certificate being dated September 29, 1910, together with an amended certificate of incorporation, which is dated October 3, 1910; look at that and see if that is the charter of the company. A I presume that is the charter.

Mr. English. I will offer in evidence the certificate of incorporation of the Pacific Navigation Company, together with the amended certificate, which is annexed to and made a part of the bill of complaint, and I think admitted by the answer.

(Marked Exhibit C. 33.)

Q I see one of the incorporators of the company was J. Frank McDavitt of Pompton Lakes;

who is he? A I think he was an employee of Mr. Joiner's.

Q Is the Mr. Mortimer E. Joiner who is named in this certificate the same gentleman who is sitting here at the table? A Yes.

Q Mr. Joiner is a lawyer? A Yes.

Q And he incorporated the company? A Yes.

Q And sacrificed himself as an incorporator also? A Yes.

Q Who is John E. Walker who is mentioned in this certificate? A I don't know.

Q I show you a paper which has been furnished me by counsel for the defendant as a copy of the lease between the Metropolitan Steamship Company and the Pacific Navigation Company, for the renting of the Harvard and Yale; did you see it at the time it was drawn up, when it was discussed between you and Mr. Nicholson? A Yes.

Q Do you recognize that as a copy? A Yes, that looks like a copy.

Q Where was that paper signed, which according to its terms was signed by J. Turner Grieve, president of the Metropolitan Steamship Company, and H. W. Goodall, president of the Pacific Navigation Company? A I don't remember where that was signed.

Q You attested it as secretary of the Pacific Navigation Company? A Yes, I saw it signed; I don't remember whether it was in Mr. Nicholson's office or—I think it was in Mr. Nicholson's office.

Q At the office of the New Haven Railroad? A No.

Q You think it was signed at Mr. Nicholson's office? A I think so.

Q Do you remember who was present at the time besides the gentlemen who affixed their names to it? A Mr. Nicholson evidently was, because he signed as secretary of the Metropolitan Steamship Company.

Q Do you remember anybody else? A I don't remember anybody else.

Q How long was it after Mr. Robbins or his secretary, Mr. Kelly, had introduced you to Mr. Nicholson, that this paper was signed? A I should say some months afterwards.

Q This paper, I see, is dated Oct. 10, 1910; some months prior to October? A I should say a month after.

Q A month after the introduction which resulted in this paper? A Yes. It may not have been that long.

Q It was some appreciable time? A Yes, some appreciable time was spent in getting the papers ready.

Mr. English. I offer in evidence for identification, paper dated October 10, 1910, just shown the witness.

(Marked Exhibit C. 34 for identification.)

Q Do you know how soon it was after the signing of this paper that the Harvard and Yale started for the Pacific coast? A Some little time after; they had to be prepared for the voyage.

Q Do you know who undertook to prepare them for the voyage? A Captain Goodall had a good deal to do with it; he superintended the work over at the ship yard.

Q At what ship yard were they fitted out or overhauled? A Robbins.

Q Who do you mean by that? A Robbins in Brooklyn.

Q The Robbins Ship Yard in Brooklyn? A Yes.

Q They were changed from coal burning to oil burning steamers, were they not? A They had been changed prior to that; they had been changed to burn oil at the beginning of the season of 1910, I think; then we changed them back and had six boilers burning coal and six boilers burning oil for the voyage around to the Pacific.

Q They overhauled them again so as to make them oil and coal burning? A Yes.

Q Do you know who furnished the money for that change of equipment? A Metropolitan Steamship Company.

Q It wasn't paid for by Captain Goodall or his interests? A No; the Metropolitan Steamship Company had agreed to deliver the ships at San Pedro.

Q Did you sail around on those ships? A No sir.

Q Did Captain Goodall go? A No.

Q Do you know any of the men who did sail on the ships on that voyage? A He sent for two captains from the Pacific coast to take them around.

Mr. Faulks. When you say "he," whom do you mean?

Witness. Captain Goodall.

Q Do you know anybody else besides those two Pacific coast captains? A Of the crews?

Q Or of the officers of the ships? A No.

Q Do you know who the paymaster was on either of the ships? A They didn't carry any paymasters.

Q Paid off when they got to the Pacific coast? A Yes.

Q Do you know who paid them off when they got there? A I think Mr. Stewart.

Q Mr. L. H. Stewart? A Yes.

Q Had you ever met him prior to that? A Yes, in New York.

Q Where? A Over at the Metropolitan Steamship Company's office.

Q Where was that office? A On the pier, North River, New York.

Q When did you first meet Mr. Stewart? A I don't recollect.

Q With reference to the sailing of the Yale and Harvard, how long before that? A I don't recollect. He had nothing to do with it up to the time I met him in Los Angeles, as far as I know.

Q How did you happen to meet Mr. Stewart at all previous to that? A Incidentally, in going into the office.

Q Was that before these negotiations for the sale of the Metropolitan Line by you or in connection with that? A I don't know; he had nothing to do with it.

Q I am trying to find out when it was you first met him; at the time these negotiations were on? A I cannot locate it, because I had no business with him at all.

Q You just happened to know him? A Yes.

Q Do you know what his connections were, if any, with the Metropolitan Line? A No.

Q Or with the New Haven Railroad? A No, I do not.

Q Did Mr. Robbins write you any other letters than those produced here today, the last

of which is April 2, 1910? A I don't recollect. He never wrote many letters.

Q I show you here a letter produced by your counsel, dated July 21, 1910, written on the letter paper of the New York, New Haven & Hartford Railroad Company, Law Department, addressed to you, signed "Edward D. Robbins," by some initial; do you remember receiving that in the course of the mail? A I do not, no; I don't remember it.

Q It was found among your papers and you received it? A I presume it was; I don't remember that letter particularly.

Q Did you have a conversation with Mr. Robbins shortly after the date of that letter of July 21, 1910? A I don't remember any conversation.

Q You were having conversations with him right along about that time? A Yes.

Q So any particular one didn't impress itself on your mind? A No.

Mr. English. I offer the letter of July 21, 1910, in evidence.

Mr. Faulks. We object to the receipt of that letter in evidence, on the ground that it and its contents are irrelevant, immaterial and incompetent, and on the further ground that there is no proof of mailing or receipt of the letter; the letter is not proven, nor is the mailing or the receipt of the letter proven.

Mr. Ward. I make the same objection.

(Marked Exhibit C. 35.)

"The New York, New Haven & Hartford Railroad Company. Law Department. Room 3617.
Grand Central Terminal.
R-M. New York, July 21, 1910.
Mr. Thomas B. McGovern,
25 Broad Street,
New York City.
Dear Mr. McGovern:—

I tried to get you on the telephone yesterday, so as to make an appointment with you for either yesterday afternoon or today. I was unable to get from the girl that answered the telephone any information as to your whereabouts.

I am going to Boston tonight, but I expect to be in New York some day next week, and can perhaps get a hold of you then.

Very truly yours,
EDWARD D. ROBBINS,
S. M.
General Counsel."

Q I see that this letter, C. 35, is dated from Room 3617 of the Grand Central Terminal; do you know whether that was Mr. Robbins' room? A I don't remember the number.

Q He did have a room at the Grand Central Terminal? A Yes.

Q I show you another letter written on the letter paper of the New York, New Haven & Hartford Railroad Company, having on it "Office of General Counsel," dated August 4, 1910, and addressed to you, and signed by "Edward D. Robbins, K."; did you receive that in the course of the mail? A I presume so.

Q I see that that letter which I showed you refers to a letter of yours dated July 30, 1910, and I now show you a carbon copy of a letter addressed to Edward D. Robbins, at Rockport, Mass., which is handed me by your counsel; is that a copy of a letter which you wrote Mr. Robbins? A Yes.

Q All of this correspondence which we are now dealing with was before you had met Mr. Nicholson through Mr. Robbins, is it not? A I cannot say for certain.

Q The lease was signed on the tenth of October, 1910, and these letters are written in the latter part of July and the first part of August; what is your recollection as to when, with reference to those, you met Mr. Nicholson? A I think probably they were written before.

Mr. English. I offer in evidence a carbon copy of the letter of the witness to Mr. Robbins, dated July 30, 1910, consisting of three sheets; and also letter dated August 4, 1910, from Mr. Robbins to the witness.

Mr. Faulks. I make the same objection to these letters as heretofore.

Mr. Ward. I make the same objection as heretofore, and on the additional ground, with reference to the carbon copy, that no foundation has been laid for the introduction of secondary evidence.

(Letter dated July 30, 1910, marked Exhibit C. 36.)

"July 30, 1910.

Edward D. Robbins, Esq.,
Rockport, Mass.

My Dear Mr. Robbins:—

I am writing to Capt. Goodall today on the subject matter of our conversation on Thursday last putting before him a tentative proposition to organize a company to operate the S. S. Yale and Harvard on the Pacific Coast under a lease for two years with an option to purchase on or before the termination of the lease. The terms of the lease to be that the lessees shall pay the cost of getting the ships to the Coast and in lieu of rental or charter money shall pay the premiums on the Marine Insurance policies at present in force and also the interest on the bonded indebtedness of $2,000,000 and keep the vessels in good condition during the term of the lease.

The option to purchase to give the lessees the right to acquire the steamers free and clear subject only to the mortgage of $2,000,000 upon payment of $250,000 cash.

I have given him the following figures:

CASH REQUIREMENTS

Cost of voyage	$65,000
Marine Insurance voyage	45,000
Repairs and dry-docking	20,000
Operating expenses, first month	50,000
Marine Insurance Oct. 15 to May 1	39,000

Interest Oct. 15 to Jan. 1	21,000
Margin	10,000
Total cash required	$250,000

DEFERRED PAYMENTS.

May 1, 1911, Marine Insurance one year	$72,000
July 1, 1911, interest six mos.	50,000
Jan. 1, 1912, interest six mos.	50,000
May 1, 1912, Marine Ins. to Oct. 15	33,000
July 1, 1912, interest	50,000
Oct. 15, 1912, interest balance	29,000
Total deferred payments .	$284,000

I have also suggested a capitalization for the company of

$350,000 8% Preferred stock.
500,000 Common stock.

$250,000 of the preferred to be sold at par with a bonus of one-half share of common to each share of preferred.

100,000 preferred, 75,000 common to be held in treasury until required.

300,000 common to be used for promotion to be divided equally between yourself, Captain Goodall and myself. Preferred stock to be retirable at 110.

I think this would work out so that at the end of the charter or lease we could probably retire the preferred and arrange for the purchase money on the Pacific Coast.

If this goes through I should want both Captain Goodall and myself to have the management of the business on the Pacific Coast at least until we carry it through to a successful stage.

I have asked Capt. Goodall to wire me on receipt of my letter and will communicate with you as soon as I hear from him.

I trust you will find the foregoing in accord with your views and remain,

Yours sincerely."

(Letter of August 4, 1910, marked Exhibit C. 37.)

"The New York, New Haven & Hartford Railroad Company. Office of General Counsel.

New Haven, Conn., August 4, 1910.

Mr. Thomas B. McGovern,
68 Broad Street,
New York City.

My dear Mr. McGovern:—

I received your letter of July 30th, and am much obliged to you for it.

I expect to be in New York Thursday, August 11th, and if you are in town that day will you try to make an appointment with you.

Very truly yours,
EDWARD D. ROBBINS, K."

Q I notice that this letter of yours to Mr. Robbins, marked Exhibit C. 36, proposed that the lessees should pay the cost of getting the ships to the Coast, and in lieu of rental or charter money should pay the premiums on the marine insurance policies, and also the interest on the bonded indebtedness of $2,000,000. I take it that that arrangement was afterwards changed, in view of what you said a moment ago, that the Metropolitan bore the expense of getting the ships to the Coast? A That letter was never acted on.

Q A different arrangement was made after you met Mr. Nicholson in the matter? A Yes, entirely.

Q All this correspondence now and negotiation with reference to the Harvard and Yale was after the sale of the securities of the Metropolitan Company, the New Jersey Company, by the Assets Realization Company, wasn't it? A Yes.

Q Why was it you went to Mr. Robbins in the matter about the Harvard and Yale? A I wanted to get his influence to help me to get the ships under charter for the Pacific coast people.

Q Did you know that he controlled the ships? A No.

Q You didn't go to him as a complete outsider? A No, I knew him very well and met him in these very negotiations and tried to interest him with me in this matter, too.

Q You knew then that the ships were under the control of either him or some of his interests, so that his aid would be of value to you? A I didn't know what interests controlled the stock of the Metropolitan Steamship Company.

Q But you thought Mr. Robbins had some interest in that, and that is why you went to him? A I don't know that I did think that. I knew that he had a lot of influence with all the people in that line of business.

Q A lot of influence with all the boat lines running between New York and Boston? A Yes.

Q Through the influence of the New Haven Railroad on that transportation? A I don't know through what influence.

Q You knew the New Haven Railroad controlled most of the shipping between New York

New Jersey State Library

and Boston, didn't you? A I have heard so; I didn't know it.

Q You heard so at that time? A Yes.

Q That was the reason you went to Mr. Robbins? A Not entirely.

Q But that was a reason? A Possibly it might have entered my mind.

Q Then sometime after this correspondence, Mr. Robbins turned you over to Mr. Nicholson to wind the thing up? A Yes.

Q And at the time of the introduction of Mr. Nicholson, it had been definitely settled between you, he would see that the Harvard and Yale were sent to the Coast, and all that remained to be fixed was the details? A That charter party was drawn before we settled up; nothing was settled prior to the signing of that.

Q It was agreed that the Harvard and Yale should be transferred to the Pacific coast? A Yes, when we signed that charter party.

Q But prior to the signing of that charter party hadn't the negotiations reached the stage where you were assured that they would in fact be sent, if the proper conditions and terms could be arranged?

Mr. Faulks. I object to that question as being exceedingly leading; there is no objection to the witness stating anything that transpired, but he is being pressed with leading questions, and I do not think that is proper or fair.

Q To what stage had the negotiations between you and Mr. Robbins progressed with reference to the transfer of the Harvard and Yale to the Pacific coast at the time he introduced you to Mr. Nicholson? A We had discussed it and he

had advised me in an advisory capacity about what might be done, and so on, and he discussed it with Captain Goodall. Up to that point it had been, you might say, definitely arranged.

Q And you and Mr. Nicholson got out the details and made up this charter party, Exhibit C. 34 for identification? A I don't recall working out many details in it, excepting the terms of the charter.

Q That is what I mean by the details. A Yes.

Q After the sale by the Assets Realization Company in March, 1910, did you have anything further to do with the freight boats and the dock property? A No, sir.

Q When did your activity in connection with the freight boats and dock property cease? A When I introduced Mr. Robbins to Mr. McKinnon.

Q And then as far as you know, they completed the details of that transfer? A Yes.

Q Do you know Mr. Calvin Austin? A Yes.

Q What is his business? A I think he is president of the Eastern Steamship Corporation.

Q Did you meet him in connection with any of those negotiations or transactions? A Yes.

Q When did you first meet him? A I don't recall the time. I think it was after it had been decided to send the ships around to the Pacific coast.

Q Where did you meet him? A Over in the office of the Metropolitan Steamship Company on the pier.

Q Was that before or after the date of the signing of the charter party, Exhibit C. 34 for identification? A I cannot say positively as to that.

Q Somewhere around that time? A Somewhere around that time.

Q What did Mr. Austin have to do with the sending of those ships to the Pacific coast? A I think he was operating the ships at the time, or had something to do with the operation of them.

Q The Yale and Harvard? A Yes.

Q They came under the allied interests of the Eastern Steamship Corporation?

Mr. Faulks. There is nothing to show that he knows anything about that.

A I don't know anything about that.

Q At any rate, Mr. Austin was president of the Eastern Steamship Corporation? A I believe he is president now, yes.

Q And he was at that time? A I don't know.

Q Did you ever hear of the Metropolitan Steamship Company, a corporation of the State of Maine? A Yes.

Q Mr. Austin was president of that concern, wasn't he? A I cannot tell you.

Q Do you know whether the Maine Company operated the Harvard and Yale? A I think they did.

Q That was after the sale by the Assets Realization Company, wasn't it? A After the sale to—

Q By the Assets Realization Company of the securities of the New Jersey Company? A I don't know who operated that.

Q When did you first gain knowledge of the fact that the Maine Company was operating the Yale and Harvard. A I don't know that I ever had any definite knowledge of it.

Q What date was it, as near as you can tell us, when you had any idea about that one way or the other? A Presumably after the sale by the Assets Realization Company, but what date, I cannot say, I don't know anything about that.

Q When you met Mr. Austin at the dock of the Metropolitan Company here in New York, who was present? A Captain Goodall.

Q Anybody else? A I think not.

Q Just you and Captain Goodall and Mr. Austin? A Yes.

Q Did you ever meet him again in the matter? A I think I met him three or four times.

Q Where other than at that place did you meet him? A I don't think at any other place but that.

Q Always met him there? A I think so.

Q And every time he was there was it in the interest of the transfer of the Harvard and Yale to the Pacific coast?

Mr. Faulks. I object to that as calling for a conclusion on the part of the witness.

Q Every time you met him there what was he there for? A I don't know what he was there for. I went there to ask him about the coal consumption of the ships, and get general information about it that enabled us to figure out what they required on the voyage around the coast.

Q Did you meet Mr. Stewart in connection with those conversations? A I may have met him there, but he didn't know anything about that part of the business, as far as I know.

Cross examination by Mr. Faulks.

Q Mr. McGovern, when did you first engage in the steamship business? A About 1906, I think.

Q You were engaged in it at that time in the capacity of a broker? A Yes.

Q You continued in that business until such time as you became president of the Caloric Company? A Practically, yes.

Q You became interested in the matter of getting the Yale and Harvard out on the Pacific Coast as early as 1907, I think you said? A 1906.

Q With whom did you take the matter up first? A Mr. Morse.

Q Mr. C. W. Morse? A Yes.

Q Was he at that time connected with the Metropolitan Steamship Company? A He had control of those two boats.

Q You said something this morning about taking the matter up with Captain Goodall and some parties in Seattle, in an effort to try to induce them to arrange the matter? A No, I had some people in Seattle, before I took the matter up with Captain Goodall, and they came on here in 1907, and I met Mr. Morse by appointment just the day before the panic of 1907; the next day the whole thing was off.

Q At that time there were negotiations on between Mr. Morse and the Seattle people through you for the sending of those boats out there? A Yes, for the sale of the boats.

Q And those negotiations were brought to an abrupt end as the result of the panic of 1907? A Yes.

Q And were never resumed, I suppose, those same negotiations? A No, I saw Mr. Morse once after that.

Q In connection with the same matter? A To talk it over with him, but at that time when I had Mr. Goodall interested.

Q Then Mr. Goodall came into the matter after the Seattle parties had dropped out? A Yes.

Q And you tried to interest him in the matter of having the boats taken out to the Pacific coast for operation there? A Yes.

Q And you succeeded in doing so; you succeeded in interesting him in the matter? A Captain Goodall? Yes.

Q You and Captain Goodall had several talks, did you not, with the Assets company about such an arrangement? A About taking the boats to the Pacific coast?

Q Yes. A Only incidental to the whole arrangement.

Q And the reason you were not able to arrange that at that time is, that you had no purchaser for the remaining part of the property? A No.

Q What was the reason? A The reason was that Mr. McKinnon said he couldn't arrange with the bondholders in Boston to release the boats under the mortgage.

Q Those particular negotiations fell through then? A Those with the New Haven?

Q No, those with Mr. Goodall and McKinnon, which you say were brought to an end by reason of Mr. McKinnon saying he could not arrange for a release from the mortgage? A I don't separate the Captain Goodall arrangements with the negotiations from the other.

Q Captain Goodall continued in them throughout? A Yes.

Q You and he had some negotiations before you met Mr. Robbins, of which nothing came, isn't that the fact? A We had negotiations with the New York, New Haven and Hartford.

Q I am speaking now of before that time. A No.

Q After Captain Goodall came into the matter who was the first person that you took it up with? I understood it was Mr. McKinnon and other people in the Assets company. A Yes.

Q You tried to make some arrangement with Mr. McKinnon then by which the boats would be sent to the Pacific coast? A No, Mr. McKinnon wouldn't listen to any such arrangement.

Q Saying that they couldn't be released from the mortgage? A Saying that he didn't want to separate the property; he wanted to sell it as a whole.

Q So that he wouldn't listen to any of your propositions unless it involved a sale of the property as a whole? A Yes.

Q And was it then that you took up with the New Haven the matter of trying to interest them in the purchase of the freight boats and the dock property? A No, I had taken it up previously to that and told Mr. McKinnon that I had a purchaser; he asked who was behind this matter with Captain Goodall; I told him I didn't feel at liberty to say, but they were people who were absolutely responsible; he said, "You don't need to tell me, I think I know who it is."

Q Your idea was that if the New Haven people would purchase the freight boats and the dock property, you would be able to negotiate a purchase of the entire properties and send the boats to the Pacific coast, the Yale and Harvard? A Yes.

Q You thought with an agreement with the New Haven to purchase the freight boats and dock properties you would be able to finance

the matter yourself through other friends of yours? A Yes.

Q After the sale of the securities had been made by the Assets company in March, 1910, you renewed, did you not, your efforts to get the Yale and Harvard out to the Pacific coast? A Yes.

Q And you went to see Mr. Robbins about the matter? A Yes.

Q You knew that he had represented the purchasers of the securities? A Yes.

Q And was it for that reason that you went to see him as to what arrangements, if any, could be made to have the boats sent out to the Pacific coast? A Yes, that was one reason.

Q You met him and had several interviews with him in reference to that matter? A Yes.

Q And it was in the course of those interviews that he said to you that the boats were not doing well on the Boston and New York run? A Something of that kind.

Q How long did those negotiations continue, those particular negotiations, the last ones? A For several months.

Q And it was during that time that the Pacific Navigation Company was formed? A The Pacific Navigation Company was formed after we found that we could get the ships.

Q By whom was that company formed? A I helped to organize it; Captain Goodall and his friends put up the capital.

Q His friends out on the Pacific coast? A Yes.

Q Did any of the capital come from this part of the country that you know of? A Not a dollar.

Q You made arrangements then sometime during the summer of 1910 with Mr. Robbins for the transfer of the boats to the Pacific coast? A Yes.

Q And the details of that arrangement were worked out with Mr. Nicholson? A After the general terms had been agreed upon which Mr. Nicholson signed, the charter party.

Q Did you meet Mr. Chase, a lawyer from Hartford, in connection with the making of those arrangements? A Yes, I did meet Mr. Chase.

Q Wasn't a good part of the work of arranging the details of the transfer and of the indenture which was finally made, done by you with Mr. Chase? A I think it was.

Q You also met him at Nicholson's office at the time the papers were prepared and signed, did you not? A I don't recall who was at the office; I met Mr. Chase a number of times, I know.

Q And discussed the matter with him? A Yes, I had forgotten his name.

Q And a good many of the details which were afterwards embodied in the indenture were worked out by you with Mr. Chase, is that not the fact? A By Captain Goodall and myself.

Q I understand that you haven't with you the letter that Mr. Robbins wrote to you after you met Mr. Mellen and some other gentlemen at the Grand Central Station, in which Mr. Robbins said that the New Haven had decided that it didn't want to consider the purchase of the freight boats? A My recollection is that that letter was written by Mr. Mellen, and addressed to either Captain Goodall, or to Captain Goodall and myself jointly, and Captain Goodall got that letter.

Q You haven't it? A No.

Q Have you a copy of it with you? A No.

Q You had nothing to do with the negotiations between Mr. Robbins and Mr. McKinnon resulting in the sale of the securities after you introduced Mr. Robbins to Mr. McKinnon, I understand? A No, at Mr. Robbins' request, he took charge of it from then on.

Q You understood during all of the negotiations that you have told us about—I mean those that occurred after Captain Goodall first came into the matter — that he was able to make the arrangements necessary to be made, to have the Yale and Harvard go to the Pacific coast? A If that did not involve the purchase of the other property, yes.

Q And that understanding was based on statements made to you by Captain Goodall and his friends as to their ability to furnish the necessary capital for that purpose? A Yes.

Q Your interviews with Mr. Austin were, as I understand, confined solely to the matter of getting the boats around to the Pacific coast,— the matter of coal consumption and things of that kind? A Technical features, yes.

Q You were simply getting information from him as to what would be necessary to have the voyage successfully made? A Yes.

Mr. Ward. I understand that Mr. English consents that if Mr. McGovern be placed upon the stand later in the progress of the cause, we shall then have the right to cross examine him on the testimony given today. I do not ask that Mr. McGovern be present again for that purpose, under this subpoena or under this notice.

Mr. English. That is all right. Mr. Hardin asked me if we could reserve him that right, and I told him that Mr. McGovern was here under subpoena, and I didn't know whether he would come back again or not. I will extend him that courtesy, of course.

Re-direct by Mr. English.

Q Do you know George W. Sterling? A Yes.

Q Who is he? A I think his title is general freight agent.

Q Of what company? A Eastern Steamship Comporation.

Q The same concern of which Mr. Calvin Austin was the president? A Yes.

Q Where did you first meet Mr. Sterling? A I have known him for several years; I don't remember just where I first met him.

Q Did you meet him in connection with the Harvard and Yale? A No, except incidentally.

Q Where did you meet him incidentally? A At the Metropolitan Steamship Company's office.

Q At the pier? A Yes.

Q Wasn't Mr. Sterling the man who got those boats ready to go to the Pacific coast? A Not so far as I know.

Q You don't know about that? A I don't know who bought the supplies, stewards' supplies.

Q You said on cross-examination that you knew that Mr. Robbins had represented the purchaser of the securities of the Metropolitan Steamship Company of New Jersey; who did you understand the purchaser to be? A I didn't know, I only knew that Mr. Robbins told me that he had a purchaser.

Q That was before the purchase was made or afterwards? A That was before the purchase was made.

Q Mr. Robbins told you then that he had a purchaser? A Yes. I testified to that before.

Q That he had a purchaser for the securities of the company? A I saw Mr. Robbins after Mr. Mellen's letter was received, and Mr. Robbins then told me that he might be able to find other people that would take this proposition up if we could whip it into shape.

Q And the thing or things which he said he could find a purchaser for were the securities which carried with them the physical assets? A Yes.

Q And you afterwards heard that his arrangements had been consummated in a sale? A Yes.

Q That the Assets Realization Company had sold to his purchaser? A Yes.

Q Did you ever learn who his purchaser was? A I never made any effort to find out.

Q The knowledge of that fact on your part was one reason why you went to Mr. Robbins with reference to the transfer of the Yale and Harvard; what were the other reasons? A The other was because of the friendship between us.

Q Who was this Mr. Chase that you met in connection with the signing part, a lawyer? A I don't know, I think he was.

Q Do you know where he came from? A No, just know his name was Chase.

Q He was in Mr. Nicholson's office? A Located there?

Q No, where you met him? A I did meet him, I think, in Mr. Nicholson's office at one

time; whether that was the first time or not, I don't know.

Q Did you also meet him at the New Haven offices? A I don't recall ever meeting him at the New Haven offices.

Q Who introduced Mr. Chase to you? A I don't remember.

Q Did you ever meet Mr. Chase and Mr. Robbins together? A I cannot say as to that.

Q You don't remember one way or the other? A No.

Q (*By Mr. Ward.*) Are you now connected with the Pacific Navigation Company? A As a stockholder only.

Q (*By Mr. Ward.*) Not as an officer or director at the present time? A No, sir.

JOHN W. McKINNON, being duly sworn according to law, on his oath says:

Direct examination by Mr. English.

Q Where do you live? A New York City.

Q Are you a resident of the State of New Jersey? A No.

Q Have you any office or place of business in New Jersey, you personally? A Personally, no.

Q How long have you lived in New York City or New York State? A New York State about five years.

Q Have you any official connection with the Bank of North America? A I am the agent for the shareholders.

Q You are known as the liquidating agent? A No, I believe my official title is shareholders' agent.

Q And how long have you been shareholders' agent of the Bank of North America? A If you don't mind, I will refer to my memorandum to give me the exact date.

Mr. English. Do you object?

Mr. Faulks. Not in answer to this particular question.

A (Continuing.) I was elected agent on October 21, 1908.

Q Are you still shareholders' agent? A Yes.

Q Among the assets which came into your possession as shareholders' agent of that bank, were there any securities of the Metropolitan Steamship Company, a corporation of the State of Maine, and referred to in the bill as Maine Company No. 1? A Yes.

Q And what were those securities?

Mr. Faulks. We object to that as immaterial and incompetent under any of the issues in this case.

Mr. Lovell. The same objection on behalf of the Pacific Navigation Company.

A There was $100,000 of the first mortgage bonds.

Q Anything else? A $234,000 of notes of the Metropolitan Steamship Company of Maine.

Mr. Faulks. May I call your attention to the fact that no time has been specified as to anything in particular, except that he has held this position since 1908.

Q When was it relative to your appointment as shareholders' agent that you became aware of the fact that the Bank of North America held these securities?

Mr. Faulks. Same objection.

Mr. Lovell. Same objection.

A Before my appointment as agent.

Q You say you were appointed agent on a certain date; when, relative to that date, did you ascertain the fact that this bank held these securities? A Shortly before my appointment.

Q So when you were appointed you knew of the presence of those securities in the assets of the bank? A Yes.

Q At that time what was the financial condition of this Metropolitan Steamship Company of Maine, No. 1? A The company was in the hands of receivers.

Q Do you know by what court they had been appointed? A By the United States Circuit Court, I believe it was at that time, of Portland, Maine.

Q Do you remember the names of the receivers? A There was Mr. Abel U. Culver, William T. Cobb and Calvin Austin.

Q Three receivers? A Yes.

Q Do you know whether on or about that time the receivers held a sale of the assets of this Maine Company No. 1? A Yes, all the property was sold under the foreclosure.

Q Foreclosure of what? A Of the trust deeds securing the bond issue.

Q And were the bonds of the Bank of North America which you have referred to, a part of the bonds secured by that trust deed? A Yes.

Q When was that sale held?

Mr. Faulks. I do not think the witness ought to refer to papers unless we are afforded an opportunity to know what they are.

Mr. English. That is true. He is referring to some private memorandum.

Mr. Faulks. He ought not to refer to papers unless he is asked a question which makes it necessary for him to consult them, and it ought then to appear on the record that he is consulting them. I do not know whether it is important or not.

A I haven't the exact date; my recollection is that it was in October, 1909.

Mr. English. The bill states October 8, 1909.

Q And that is about the date as you recollect it? A Yes.

Q Did you attend that sale? A Yes.

Q And what, if anything, did you do? A I bought in property in behalf of the reorganization committee.

Q A committee representing whom or what? A A committee of reorganization was formed several months prior to that, consisting of Mr. George E. Shaw, Mr. Henry Hornblower and myself.

Q Will you tell us who Mr. George E. Shaw is? A George E. Shaw is president of the Assets Realization Company.

Q At that time? A At that time.

Q And Mr. Henry E. Hornblower is who? A A partner in the firm of Hornblower & Weeks.

Q What is their business? A Bankers, New York and Boston.

Q Do you know the First National Bank of Boston? A Yes.

Q Did Mr. Weeks have any connection with it? A I think he was a director in that bank at that time.

Q And do you know of your own knowledge whether that Boston bank held any securities of this Maine Company No. 1? A I believe they held a large block of the notes of the company.

Q Did you do the bidding on behalf of the committee of three? A Yes.

Q And was the property sold to you? A Yes.

Q What property was sold to you on that sale; generally, I mean? A Two passenger boats, Yale and Harvard, and four freight boats.

Q Do you remember their names? A H. F. Dimock, H. M. Whitney, J. S. Whitney and the fourth, the name of which I forget, and certain other floating equipment; the terminal at Boston.

Q What about any wharf rights? A The terminal in Boston.

Q What was that wharf known as? A There was one Union wharf that was owned in fee by the company subject to a mortgage of $500,000, as I remember; another wharf was held under a lease.

Q That was known as the India Wharf? A Yes.

Q Any wharfage rights or interest in New York? A No. I will amend that by stating that they had a claim on Pier 45.

Q North River? A North River, which the company was forced later to surrender.

Mr. Faulks. I move to strike out any evidence just given by the witness with regard to wharf properties or wharf rights in New York, as being not within the case made by the bill. It is our first information on the subject, the bill being explicit as to the property conveyed.

Q Did you get the title or interest in this New York wharf at all? A I believe we acquired the title the old company had.

Q But it didn't have any? A It didn't have any, as it subsequently developed.

Q Was the name of the fourth boat the Herman Winter? A Yes.

Q And some other floating equipment besides that? A Yes.

Q What was the most valuable of that property which you have enumerated?

Mr. Faulks. Objected to as calling for a conclusion on the part of the witness as a matter of which we should have the facts.

Q What was the character of the two steamers, the Harvard and Yale; were they freight boats or what? A They were passenger and freight boats, turbines, fast.

Q Do you know anything about their appointments or equipment; ever been on them? A Yes, I have been on them often.

Q What were they? A First-class passenger steamers.

Q Do you know between what ports they operated? A Between New York and Boston.

Q Do you know what time they made between those ports, what their schedule time was? A Their schedule time leaving either port, five o'clock, arriving the next morning at eight.

Q Had those boats operated during the receivership of the Maine Company No. 1? A Yes.

Q By whom? A By the receivers.

Q And you bought them as a going concern, so to speak? A Yes.

Q Following your purchase on behalf of the committee of those assets, was a plan or agree-

ment of reorganization prepared? A The purchase, rather, was made as the result—

Mr. Faulks. Won't you just answer that question yes or no?

Q (Last question repeated.) A No.

Q What was done? The plan of reorganization was prepared prior to the purchase, and as a result of that plan I made the purchase to carry out the plan.

Q I have in my hand a printed pamphlet endorsed on the outside "Metropolitan Steamship Company, Plan and Agreements of Reorganization, Dated May 1, 1909." I show you that and ask you if that is the plan and agreement which you say was prepared before the sale, and in accordance with which you bought? A Yes.

Q A great many copies of this were printed, all like this one which I show you? A Yes.

Mr. English. Any objection to that, Mr. Faulks? I offer it in evidence.

Mr. Faulks. We object to its reception in evidence on the ground that it is not material nor relevant to the decision of any issue involved in this case, and is incompetent under any such issue, and also upon the further ground that it is not binding upon the defendants, or any of them.

(Plan and agreement of reorganization marked Exhibit C. 1.)

Q I understand that the purchase of the assets at the sale which you made were subject to the liens and debts of the company? A Yes, subject to the liens.

Mr. Faulks. It may be understood that our objection goes to this entire line?

Mr. English. Certainly.

Q I call your attention to page A3 of the Exhibit C. 1, which sets forth a number of mortgages and other debts, under the caption "Present debts?" A Yes.

Q Were they the liens which you bought subject to? A They were all subject to the preferred debt.

Q You bought subject to the preferred debt? A Yes.

Q What about the rest of it? A In the foreclosure sale we bought the steamers and real property; we did not buy what was termed miscellaneous assets, such as the equity in that claim.

Q Which claim do you refer to? A A note held by Hornblower & Weeks.

Q Amounting with interest to—? A $147,325.82.

Q As set forth on page A3? A Yes; neither did we buy what was known as the liquid assets in the hands of the receiver, but the property was bought subject to a large number of liens filed against the steamers Harvard and Yale.

Q Which were summed up under the caption "Preferred Debt?" A Yes, that is my recollection.

Q And they included the liens of the builders of the steamers? A Yes.

Q Messrs. Englis & Fletcher? A Yes.

Q Was this plan, Exhibit C. 1, the final plan under which the committee operated? A No, there was one amendment made to that later.

Q So that they operated under the amended plan? A Yes.

Q Have you with you, or can you produce, a copy of this amended plan? A I have not with me, but I am quite sure I can produce it.

Q Was that put in printed form similar to Exhibit C. 1? A I don't think so, I think it was only typewritten.

Q Did the committee whose names appear on this plan, C. 1, continue the same under the amended plan? A No, I believe either just before or just after the purchase Mr. Henry Hornblower retired from the committee.

Q Following the purchase by your committee of those physical assets, and the preparation of the amended plan, was that amended plan assented to by the parties in interest?

Mr. Faulks. We make the same objection to this question as we did at the time that Exhibit C. 1 was offered in evidence, and the further objection that the amended plan ought to be produced before the witness answers this question.

Q Can you explain why you haven't got the amended plan with you at this present session? We asked you to produce it. A I was unable to find in my office the originals of all of these papers; I found copies. I thought the originals were in Philadelphia, in Mr. Shaw's possession. Mr. Shaw is out of town for a few days and I have been unable to locate them.

Mr. Faulks. I must insist on its being here before the witness is asked in regard to it.

Mr. English. We will produce it before the case comes to hearing.

Q Under that amended plan did you or your committee operate the steamship line?

Mr. Faulks. I make the same objection.

A We immediately formed a new corporation.

Q And what was the name of the new corporation? A Metropolitan Steamship Company of New Jersey.

Mr. English. Which is referred to in the bill as the defendant company, Mr. Faulks.

Q I show you at this point a certificate of incorporation of the defendant company, certified to by the Secretary of State, and I ask you if that looks to you like a copy of the certificate?

Mr. Faulks. Isn't that admitted by the answer? If you say it is, you can offer it without any objection on our part.

Mr. English. I will offer in evidence a certified copy of the certificate of incorporation, a copy of which is annexed to the bill and admitted in the answer.

(Certificate of Incorporation marked Exhibit C. 2.)

Q This certificate was filed on the 8th day of November, 1909, which appears to have been about a month after the purchase of the property, so that you immediately, apparently, formed this corporation, and then what did the corporation do? A Issued their securities and took title to the property.

Mr. English. I offer in evidence a certified copy of the first annual report of the Metropolitan Steamship Company, the defendant, certified to by the Secretary of State. Is there any objection?

Mr. Faulks. No.

(Annual report dated November 27, 1910, marked Exhibit C. 3.)

Mr. Faulks. May I ask you to inquire and clear this up at this time. The witness said they immediately took title to the property; that is rather indefinite, as the evidence stands. We do not want you to require him to produce any dates or papers on that point, but we do want to know what you claim at this time.

Q What property did this defendant company have transferred to it and with which it proceeded to do business? A The property acquired at the purchase of the foreclosure sale, to wit, the Harvard and Yale, the four freight steamers, the terminal in Boston, or rather two terminals, one in fee and one in lease and the other miscellaneous floating equipment.

Q So everything that was purchased at that sale was turned over to this company, is that correct? A Yes.

Q Do you remember what securities were issued by the company; you say it proceeded to issue securities? A The securities were $3,000,000 first mortgage bonds, $500,000 of two or three-year notes, a million and a half notes due on or before ten years, without interest, and a million and a half in stock. I believe the original plan provided for issuing three million of stock, but that under the amended plan was changed to the issuance of a million and a half in ten-year notes and a million and a half in stock.

Q Referring to the first annual report, which is Exhibit C. 3, it states that the directors are three in number, namely, Thomas Aschenbach, Jesse Myers and Ernest J. Ellenwood; will you tell us who that Mr. Aschenbach is or was? A Mr. Aschenbach and Mr. Myers were in the office

of our counsel. They were in the office of our attorneys which formed the corporation.

Q Mr. Ellenwood was whom? A I don't remember.

Q It appears from this same exhibit, C. 3, that the officers of the company whose terms expired November 18, 1910, were: President, Mr. Aschenbach, and secretary and treasurer, Campbell Carrington; will you tell us who Campbell Carrington is? A Campbell Carrington is one of the vice-presidents of the Assets Realization Company.

Q Have you any connection with the Assets Realization Company? A Yes, I am also the vice-president of it.

Q And you were at that time? A Yes.

Q Do you know Mr. Thomas B. McGovern? A I have met him.

Q Do you know what his business is? A No.

Q Do you know what his business was in 1909 or thereabouts? A He claimed to be a broker.

Q Dealing in what, do you know? A He claimed to be a steamship broker, I should say.

Q Do you know a Mr. Goodall? A I have met him.

Q Do you know his full name? A I always knew him as Captain Goodall.

Q Do you know where he hailed from? A San Francisco, I believe.

Q Do you know Mr. Edwin D. Robbins? A I have met him.

Q Do you know where he lives? A In New Haven I knew him.

Q Do you know what his profession is? A I believe a lawyer.

Q Do you know whether or not he has any connection with the New Haven Railroad? A Yes, I understood he was general counsel of the New Haven Railroad.

Q Following the purchase by the committee of the assets of the old Maine No. 1, and the formation of the defendant company and the subsequent operation of the steamship line, did you have any—

Mr. Faulks. Does it appear yet that they were subsequently operated, Mr. English?

Mr. English. He said so; if there is any doubt about it, I will ask him again.

Q (Continuing) and the subsequent operation of the steamship line by the defendant company, did you have any negotiation of any character with either Mr. McGovern or Captain Goodall or Mr. Robbins? A Yes.

Q Which of the three did you come in contact with first, if you remember?

Mr. Faulks. I would like to inquire whether the negotiations were had verbally or in writing.

A My recollection is, Captain Goodall first.

Q Were your negotiations with the captain conducted verbally or in writing? A Verbally.

Q He was present here in New York? A Yes.

Q And which of the three did you next get in touch with? A Then with Mr. McGovern and Captain Goodall together.

Q And your negotiations with them were looking toward what general object? A To a sale of our securities, meaning the stocks and bonds and notes of the Metropolitan Steamship Company.

Q Did you have any particular purchaser in mind at that time, or were you looking for one? A We were looking for one.

Mr. Faulks. You haven't asked whether the negotiations with Mr. McGovern and Captain Goodall were in writing.

Q Were the negotiations with Mr. McGovern conducted verbally or in writing? A I think verbally.

Q Then when was it that you came in touch with Mr. Robbins, and approximately how long after the negotiations with Mr. McGovern and Captain Goodall? A I should say within thirty days.

Q And how was he brought into the matter? A A meeting was arranged at 25 Broad Street, where Mr. McGovern, Captain Goodall and Mr. Robbins, and there was another gentleman, whose name I forgot, were present.

Q And in what capacity was Mr. Robbins there, do you know?

Mr. Faulks. I object as calling for a conclusion upon the part of the witness and as being clearly an improper question.

Q As a purchaser or negotiator or in what capacity?

Mr. Faulks. Same objection.

A I should say negotiator, joint negotiator.

Q Joint negotiator with whom? A With Captain Goodall.

Q Were the negotiations with Mr. Robbins conducted verbally or in writing? A Verbally.

Q You say they met at 25 Broad street? A Yes.

Q At whose office? A I am quite sure that was in the office of our counsel, Mr. Marshall.

Q And did you have more than one session with Mr. Robbins in those negotiations? A At that meeting Mr. Robbins was present only a few moments; these negotiations, however, never proceeded very far or very long.

Q What happened to them? A We could agree on terms but Captain Goodall couldn't produce the money.

Q So that those particular negotiations fell through? A Yes.

Q Did you afterwards have any other or new negotiations which brought in Captain Goodall or Mr. Robbins? A I should say a month later.

Q Can you fix the approximate date; when was the first meeting of the three which fell out? A May I look at my memoranda to see what, if anything, I have here on that day?

Mr. Faulks. We would like to know from what the memorandum has been prepared before you use it.

Witness. From dates of contracts, letters in my office involving this matter, by which I can fix dates.

Mr. Faulks. No objection.

Mr. English. You may refer to your memorandum to give us the date of the first meeting of the three.

Witness. I have no memorandum that will give me exact dates.

Q About when was it? A I should say that the first meeting about which we have been talking was in January, 1910.

Q And those negotiations you say fell flat because the captain couldn't produce the money? A Yes.

Q When was the second meeting which you have referred to, between you and Captain Good-

all and Mr. Robbins? A That would be February—no, there was a longer space between that; I am simply giving my recollection, you understand. I should say that the negotiations with Captain Goodall were probably in November or December.

Q Of which year, 1910? A 1909.

Q The first one? A Yes. Then the negotiations with Mr. Robbins were two or three months subsequent.

Q So that would bring that later, in 1910? A This was February, 1910.

Q Then the negotiations between you and the three, namely, McGovern, Goodall and Robbins, which fell flat, were in the fall of 1909? A Yes.

Q Then the negotiations between you and Goodall and Robbins, which you are now about to refer to, were in the early part of the year 1910? A No, the negotiations between Mr. Robbins; Mr. Goodall was not involved in the second.

Q Mr. Goodall was out of the second? A Yes.

Q Just Robbins? A Yes, Mr. Robbins.

Q You and Robbins? A Yes.

Q That was early in 1910? A Yes.

Q Where did the negotiations between you and Mr. Robbins take place? A In my office, 25 Broad Street.

Q And the general object of those negotiations was what?

Mr. Faulks. We object to that on the ground that it is incompetent and calls for a conclusion upon the part of the witness. I think he ought to state what was done or said and not be permitted to state what the objects of the negotiations were.

A We had securities to sell and Mr. Robbins said he had clients, other than the New Haven Railroad, who wanted to buy.

Q Did he disclose to you who his clients were? A Not until the matter was consummated.

Q How many meetings did you have with Mr. Robbins before the matter was consummated? A I should say at least half a dozen.

Q Do you remember where they were held? A Most of them at my office.

Q And when did those negotiations terminate in a definite agreement? A The last of February or first of March, 1910.

Q Where was the final meeting held which resulted in the definite agreement which you have referred to? A That was in my office, I am very sure.

Q You have said that some of the meetings were held in your office; where else were meeting held beside your office? A I think I met Mr. Robbins perhaps once or twice up town.

Q Do you remember where? A At a club.

Q Did you meet him at the office of the New Haven, at the Grand Central?

Mr. Faulks. I object to that as immaterial and irrelevant.

A I am not certain as to that.

Q At the time you were conducting these negotiations how many shares of stock of the defendant company did you personally either own or control? A Just about one-half.

Q Did you have a majority over the half or under the half, or were you in the minority, under the half? A Oh, I will amend that answer. As the plan was changed and one-half

of the stock was retired and notes were issued, we had much more than half, or control, of the remaining stock.

Q The remaining $1,500,000? A Yes.

Q Can you tell what proportion of that you owned or controlled? A Eighty or ninety per cent.

Q And was it your stock control which elected the officers which appear in the first annual report, and directors? A Those officers were the officers when the corporation was originally formed.

Q You say these negotiations with Mr. Robbins resulted in a definite agreement, was that agreement in writing or orally? A In writing.

Q Have you got that with you? A No, I have not.

Q Have you got it in your possession, or a copy of it? A I have copies.

Q Can you produce that for us? A Yes.

Q Do you remember the gist of that agreement, as to what it provided—

Mr. Faulks. We object to that as it appears that the agreement is in writing and the witness says he will produce it or a copy of it.

Q Do you remember the date of the agreement? A I could give the date by referring to my memorandum.

Mr. Faulks. I have no objection.

A (Continuing) March 4, 1910.

Q Where was the agreement signed? A In my office, I am quite sure.

Q At 25 Broad street? A Yes.

Q And by whom was it signed?

Mr. Faulks. Won't that appear on the agreement itself?

Mr. English. Yes.

A Douglas Nicholson, Mr. Robbins' client, on the one part, and by the Assets Realization Company on the other hand.

Q When you say Mr. Douglas Nicholson, do you mean the same gentleman who appears now as one of the counsel for the defendant company in this case, the gentlemen sitting here at the table? A I presume so.

Q Who was present when this final agreement was signed by Mr. Nicholson on the one part and the Assets Realization Company on the other part? A I believe Mr. Nicholson had with him his counsel, a Mr. Chase, I think from Hartford—I am unable to give his full name from recollection.

Q Anybody else? A Not that I remember now.

Q Was Mr. Robbins there at the time? A Not in the room.

Q Had he been in the room previous to the signing of the papers? A Undoubtedly he was there that day.

Q And did he leave the room just prior to the signing of the papers? A I don't want to say that.

Q At any rate he did go out before the papers were signed? A He was not there when the papers were signed.

Q After the papers were signed did he return to the room? A I do not think he was out of the building; I do not remember whether he went into that room or whether we came out of the room in which the papers were signed.

Q After the papers were signed Mr. Robbins joined the party either by going to where they were or the party going to where he was; is that correct? A Yes, I think that is right.

Q And he saw this agreement after it had been signed? A I presume so.

Q It was right there for exhibition, wasn't it? A Yes.

Q What part in the proceedings did Mr. Chase take at that time? A I understood that Mr. Chase was counsel for Mr. Nicholson or some of the interested purchasers, and he examined all the papers carefully.

Q And did Mr. Nicholson appear at that time as a purchaser? A Yes.

Q Or as representing him? A I think he appeared as the purchaser.

Q And that agreement was for the sale of the securities of the defendant company? A Held by us, yes.

Q And that involved the transfer of the eighty or ninety per cent. of the stock which you held? A Yes.

Q And what else? A Bonds.

Q How many? A I shall have to refer to my memorandum.

Mr. English. Any objection?

Mr. Faulks. Yes, I think the agreement ought to be produced.

Mr. English. I am very sorry it is not here; we asked for it.

Mr. Faulks. We object to it until the agreement is produced.

Q From your recollection, without referring to the paper, can you tell approximately what number of bonds were turned over?

Mr. Faulks. We object to that as not being the best evidence of the number of bonds that were sold, such evidence being the agreement already referred to by the witness as one in his possession, and which he is able to produce, or one of which he has a copy, which is in his possesion and able to produce.

A About $450,000 in bonds.

Q First mortgage bonds? A First mortgage bonds.

Q Were any of those notes?

Mr. Faulks. We make the same objection.

A There were $500,000 of the two or three-year notes and two or three hundred thousand dollars of the ten-year notes.

Q At that time where were the stock books and transfer books of the defendant Metropolitan company? At your office on Broad street? A Yes, I think so.

Q And at that time were the transfers of the stock certificates made out and turned over? A You are referring to the—

Q The sale to Mr. Nicholson. A The delivery of the property and receipt of the cash?

Q No, I haven't got to that yet; I am trying to find out now, if at the time of the signing of that agreement there were made out and turned over certificates of stock representing the stock which you had up to that time owned or controlled? A I think there was an interval of a day or two or three days between the signing of the agreement and the delivery of the securities.

Q So at this meeting on March 4, 1910, at your office, when the agreement was signed, none

of the securities were delivered or turned over? A No.

Q When next did the parties meet? A As I say, within one or two days thereafter the matter was closed out.

Q And where was the matter closed out? A I believe the securities were delivered and the cash paid at the Chase National Bank.

Q That was on Saturday afternoon? A It was on an afternoon; I remember that it happened after banking hours.

Q At the rooms of the Chase National Bank in New York? A Yes.

Q Will you tell us who were present on that occasion? A There were half a dozen there; I think Mr. Nicholson was there, Mr. Chase—

Q His counsel, to whom you previously referred? A Yes—another gentleman representing the purchaser, I think Mr. Canfield.

Q Do you remember anybody else; you were there of course? A Yes.

Q Was Mr. Carrington there? A I think Mr. Carrington and Mr. Shaw were also there.

Q What about Mr. Robbins? A Yes, I believe Mr. Robbins was there.

Q Who was this Mr. Canfield you referred to; had you ever met him before? A No, I don't think I had met him before.

Q Do you know where he came from? A No.

Q Is he in the room today? A I don't believe I would recognize Mr. Canfield if he was here; I met him once.

Q On that one occasion? A I think that was the occasion.

Q Do you know whether he is a lawyer or not? A No.

Q In what capacity was he present?

Mr. Faulks. Same objection as we made before when the previous question was asked as to capacity.

Q As purchaser or how? A As a purchaser for part of the securities.

Q Was he there as a joint purchaser with Mr. Nicholson or as an independent purchaser of a part of the securities?

Mr. Faulks. Same objection.

A He was a purchaser of part of the securities.

Q Had he been a party to this contract which had been signed some days before? A No.

Q That contract, as I understand it, was for the transfer of all those securities, was it not, to Mr. Nicholson?

Mr. Faulks. We object to that question on the same grounds as we have heretofore, namely, the fact that the contract is the best evidence as to its contents.

A I think this contract provided for the sale and the purchase of three blocks of securities; whether the contract provided for the three blocks, I don't know, but I sold three blocks; first, the block belonging to the reorganization managers—

Q You mean block of stock? A Blocks of securities; they were mixed securities; second, was the block of securities held by the National Bank of North America, of which I was the liquidating agent; third, there was a block of bonds held by the Hudson Navigation Company.

Q Did you have any connection with that? A Of which at that time I was either a director or president.

Q And those three sets of securities comprised altogether the securities you previously mentioned, namely, the agent for the stock and the bonds and the notes? A Yes.

Q Was there any other person appearing as a purchaser other than Mr. Canfield and Mr. Nicholson? A Not that I remember, no.

Q At that time was this agreement which had previously been signed, exhibited? A I am not certain as to that; the delivery of the securities was carried out strictly in accordance with the terms of the agreement, and I presume we did check over the agreement to see that all its conditions were complied with.

Q Was any money paid upon the transfer of those securities? A Yes.

Q Do you remember in what form it was paid, whether cash or check? A I believe cashier's checks.

Q Drawn on what bank? A I don't remember that.

Q How many checks? A I believe three.

Q Do you remember what they aggregated, the total?

Mr. Faulks. Same objection as before, the best evidence of the contract price being the agreement itself, which the witness can produce.

Mr. English. The best evidence is the money which was turned over.

Mr. Faulks. We make the additional objection that the checks should be produced and offered in evidence, and that we ought not to be expected to rely upon the uncertainty of the witness's memory in regard to these matters.

Mr. English. Then we call on your side—you have Mr. Nicholson here present—to produce the checks which were paid over to his behalf, as the signer of the agreement; have you got them?

Mr. Faulks. It appears they were cashier's checks and therefore they would not be in his custody.

Q The question is what the total aggregate of those three checks was? A The check to the syndicate or to the Assets company was $1,400,000, out of which I had to return forthwith to the Metropolitan $95,000.

Q The Metropolitan, you mean the defendant company? A Yes, taking up their notes and turning over the notes as part of the purchase price.

Q What was the next check for, if you remember? A The next check was for the National Bank of North America, $100,000.

Q And the next check? A To the Hudson Navigation Company, $275,000 or $280,000.

Q At the time this money was paid over in this way, were the stock certificates transferred to these purchasers? A Yes, the stock certificates were transferred and handed over; they adjourned to our office and held a meeting and elected the nominees of the purchaser as the officers of the company.

Q Were those stock certificates turned over, the certificates which you held and controlled, endorsed in blank; was that the form? A Yes.

Q And then from the Chase Bank you adjourned to your office and new certificates were issued, is that correct? A No, we returned to our office and I and my associates resigned as

officers of the company—elected the nominees of the purchaser.

Q You and your associates, still as stockholders of record, did the voting? A Yes.

Q Voting for the nominees of the purchaser? A Yes.

Q Who made the nomination, Mr. Nicholson? A I don't remember that.

Q Before we get to that stockholders' meeting, how long do you suppose these proceedings occupied at the Chase Bank? A Probably an hour.

Q Was Mr. Robbins present when the money was turned over—the checks were turned over to you? A No.

Q Do you remember who was present at the time the checks were physically turned over? A I think Mr. Nicholson and two other gentlemen, I remember, were there.

Q Do you remember who the two other gentlemen were? A I think Mr. Chase and Mr. Canfield.

Q Mr. Chase, Mr. Canfield, Mr. Nicholson and yourself were in the room when the checks were given to you and the securities given to them; is that correct? A Yes.

Q How long prior to that had Mr. Robbins gone out of the room? A I don't know whether he had actually been in the room, but he was in the bank.

Q Did Mr. Shaw and Mr. Carrington also return at that time? A They were in the bank until the matter was closed, as I remember it.

Q Do you remember Mr. Robbins saying to you before the checks were turned over and the securities delivered, words to the effect that "I

must be out of the room while this transaction is completed?''

Mr. Faulks. We object to that upon the ground that it is incompetent, and any answer that might be given to the question would not be binding upon the defendants or any of them.

A No, I don't remember that.

Q Do you remember what Mr. Robbins did say?

Mr. Faulks. Same objection; anything that Mr. Robbins may have said would not be binding upon any of the defendants, or evidential against any of them.

A I don't remember the exact language, of course, that was used—

Mr. English. Give it as near as you can.

A (Continuing.) but Mr. Robbins didn't care to be present when the transaction was closed up.

Q Did he so express himself?

Mr. Faulks. Same objection.

A Yes.

Q Can't you remember the language which he used as he expressed himself he didn't care to be present?

Mr. Faulks. Same objection.

A No, I cannot remember the exact language.

Q You remember that was the gist of his remark? A Yes.

Q After the transaction was closed and the checks turned over and the securities turned over, did Mr. Robbins return to the room?

Mr. Faulks. The witness hasn't said that he was in the room.

Q I will amend the question. After the checks were turned over and the securities were turned over, did Mr. Robbins come into the room where the transaction had taken place? A I think more likely that when the transaction was closed we stepped out of the room.

Q After the transaction was closed, did you see where Mr. Robbins joined your party? A Yes.

Q At the Chase Bank? A Yes.

Q Did Mr. Robbins following that jointure proceed to check up these securities?

Mr. Faulks. Objected to as immaterial and incompetent, and upon the further ground that anything that Mr. Robbins may have done or may not have done, is not binding upon any of the defendants or evidential against them.

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

Q Do you remember whether following the closing of the transaction in the way you have described, namely, the turning over of the checks on the one part, and the securities on the other, the securities were then checked up with the agreement? A I think they were checked up before the cash was turned over.

Q Can you say whether Mr. Robbins was in the room when the checking up was done? A No, I cannot.

Q It was after that that you, all hands, adjourned to your office on Broad Street and held this corporation meeting? A Yes.

Q Was that meeting at your office a directors' meeting at which you resigned? A Yes.

Q And the officers and directors of the company then resigned from office, is that correct? A Yes.

Q When were your resignations to take effect, if you know? A I should say forthwith; we resigned and the resignations were accepted *instanter.*

Q Were new officers and directors then elected? A Yes.

Q Do you remember the names of the officers and directors who were then elected? A I am quite sure that Mr. Douglas Nicholson was the treasurer; the names of the other officers I do not remember.

Mr. English. I offer in evidence copy of the annual report of the defendant, Metropolitan Steamship Company, which is certified to by the Secretary of State, and dated December 16, 1910, being the second page of Exhibit C. 1.

Mr. Faulks. No objection.

(Annual report dated December 16, 1910, marked Exhibit C. 4.)

Q I show you Exhibit C. 4, from which it appears that the secretary and treasurer of the defendant company is named as Douglas Nicholson; is that the gentleman you referred to? A Yes.

Q It appears from this Exhibit C. 4 that in December, 1910, the president of the defendant company was J. Turner Grieve; do you know him or did you know him at that time? A I presume I met him at that meeting, but I don't remember him.

Q Do you remember whether he was nominated at this meeting in your office of which we have been speaking? A No.

Q You don't remember his name being mentioned? A No.

Q Do you remember whether the name of Adolph L. Engelke was mentioned at that meeting? A I do not remember.

Q Do you remember whether the name of Rodney T. Martinsen was mentioned? A No.

Q Or the name of Thomas C. Hughes? A No.

Q When you say no, you mean you do not remember? A I do not remember.

Q At that time had the defendant company still in its possession the Harvard and Yale, the freight boats and freight flotilla and the dock properties which had been purchased before, or had you parted with those at that time? A A short time before, we had sold these properties.

Q How long before the meeting in the Chase Bank, when the transaction was closed, which was the same day of the meeting in your office when you and your associates resigned from the company—how long before that date had this physical property been sold? A Perhaps two weeks.

Q What property at that time was sold? A Four freight boats on one sale, and the wharf property in another.

Q What about the Harvard and Yale? A They remained.

Q They remained with the company? A Yes.

Q Do you remember to whom the four freight boats had been sold, and when you say four freight boats, does that include the other freight

equipment? A The freight equipment going with it.

Q To whom had that been sold? A They were sold to Wing & Russell.

Q They are lawyers in this city? A Lawyers I think in 39 Wall street.

Q To whom had the dock properties been sold? A I don't remember the name of the purchaser of that.

Q Did you conduct the negotiations which resulted in the sale of that physical equipment? A It was part of the general agreement for the sale of our securities.

Q It was a part of the negotiation which had been conducted with Mr. Robbins and Mr. Nicholson and Mr. Chase? A Yes.

Q Where was the meeting held at which the property, consisting of the freight floating equipment, was turned over to Wing & Russell? A I don't remember that.

Q In this city or out of this city? A My recollection is that the company executed a conveyance of it and sent it to the trustee under the bond issue of the American Trust Company of Boston, and that the purchase was consummated there.

Q In Boston? A Yes.

Q Were you there? A Yes.

Q Do you know who was there on behalf of the defendant company? A No, I don't remember.

Q Was Mr. Carrington? A I don't think so.

Q Prior to the meeting in Boston had the defendant company executed any papers for the transferrence of this flotilla? A The meeting

in Boston that I have mentioned was to conclude and close the sale.

Q What I want to know is, whether prior to that meeting the papers were executed and taken up there for the purpose of the closing? A Undoubtedly.

Q Do you remember the date of the execution of those papers? A I do not.

Q Would you say about two weeks before the other transaction at the Chase Bank? A Yes.

Q Do you remember what the papers were which were executed for the purposes of that transfer?

Mr. Faulks. In what form?

Q What kind of papers, deeds or documents? A First, a statement furnished to the trustees, showing the value of the property which we proposed to sell; second, an accounting statement showing the result from the operation of the freight vessels for I think three or four or five preceding years; a resolution of the board that it was in the interest of the company that the boats should be sold at that price, and the deeds to the property.

Q Who had prepared the appraisal which you refer to as having been turned over? A We had three, I believe.

Q Three appraisals or three persons making? A Three persons making them; we had one, the trustee had one, and I think Mr. Chase's client prepared a third.

Q Do you remember whether the appraisals all agreed? A The difference between them was not large.

Q Were any other appraisals made, that you know of, other than those three? A No.

Q You have spoken of a resolution of the Board of Directors, that it was to the interest of the company to make this sale. The directors at that time consisted of Messrs. Achenbach, Myers and Ellenwood? A No, I think it consisted of Mr. Shaw; I think Mr. E. B. Wire and myself.

Q Mr. Shaw, as already appears, was one of the members of this original committee? A Yes.

Q He is in Philadelphia, you say? A Yes.

Q Who is Mr. Wire? A Mr. Wire was one of my assistants in the office.

Q In the Assets Realization Company? A Yes.

Q At whose request was that resolution passed for the sale of this property which you have referred to?

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

A I have already stated that it was part of the general agreement for the purchase and sale of the securities.

Q So as a part of this general agreement for the sale of these securities it was understood that the freight boats and flotilla were to be sold as you have described, is that correct?

Mr. Faulks. I object to that question, and direct counsel's attention to the fact, and also the attention of the witness to the fact, that we have already objected to anything in reference to the contents of this agreement unless the agreement itself is produced.

A Yes.

Q Was the arrangement for the sale of this physical property embodied in the terms of the

agreement which was signed, or was the arrangement made before the agreement was signed? A I think the arrangement was made before the agreement was signed.

Mr. Faulks. I think we are entitled to know whether it was made in writing or not.

Q Was the arrangement made in writing or was it a verbal understanding? A I think that was verbal.

Q Do you remember at whose suggestion that arrangement was made? A The terms of the agreement were arranged with Mr. Robbins.

Q And this plan for the sale of this freight boat equipment before the formal written agreement was signed, was part of Mr. Robbins' plan and suggestion? A Yes.

Q The final transfer of the title to this freight boat equipment before the formal written agreement was signed, was part of Mr. Robbins' plan and suggestion? A Yes.

Q The final transfer of the title to this freight equipment took place, you say, in Boston? A I am quite sure it did.

Q Do you know what was paid for this freight equipment? A I think the price was $650,000.

Q How was it paid, in cash or securities? A In securities.

Q Do you remember what securities? A First mortgage bonds.

Q Bonds of what company? A Of this Metropolitan Steamship Company.

Q The New Jersey Company? A Yes.

Q And the purchasers at that sale were whom; Wing & Russell, you say? A Yes.

Q So that, as I understand it, Wing & Russell paid your interests $650,000 in first mortgage

bonds of the defendant company. is that correct? A No, they delivered the bonds to the trustee.

Q Who was the trustee? A The American Trust Company of Boston.

Q The trustee under the mortgage? A Yes.

Q The American Trust Company of Boston was the trustee under the mortgage securing these first mortgage bonds of the defendant company; is that right? A Yes.

Q And when the bonds were delivered to the trustee they were cancelled, wiped off? A Yes, I presume so.

Q So that the arrangement was virtually a reduction of the defendant company's mortgage to the amount of $650,000, in exchange for those boats? A Yes.

Q You say those bonds were delivered to the trustee by Wing & Russell?

Mr. Faulks. Does the witness know?

A I don't know.

Q Do you know whether prior to the delivery to the trustee, Wing & Russell had $650,000 of these bonds in their possession? A I don't know.

Q At the time of this general occurrence, how many first mortgage bonds were issued and outstanding of the defendant company? A $3,000,000.

Q All issued and outstanding? A Yes.

Q Do you know in whose hands they were held? A I did at that time know quite largely who held them.

Q Can you tell us who held them and what amounts, as near as you can recollect? A I remember a few.

Q Tell us what you do remember. A Hudson Navigation Company had about $675,000;

National Bank of North America $100,000; Hornblower & Weeks held as collateral $120,00[illegible].

Q Who else? That takes about $1,000,000. A We held half a million.

Q Your Assets Realization Company $500,000? A Yes.

Q Who else? A Mr. George E. Fernald of Boston held, I guess $500,000 more.

Q That is $2,000,000; who held the balance? A The balance had been sold to Fernald and was held in small lots.

Q So they were controlled by Fernald? A Yes, probably.

Q You mean they had been originally sold to Fernald and by him sold to outsiders, or that Fernald had bought them to sell for the company to outsiders? A Just what arrangement Fernald made with the company a year or two prior to the failure of the company, I do not know, but Mr. Fernald advised me that he had sold and distributed—the term he used—about a million dollars of the bonds.

Q You are speaking of the bonds of the defendant New Jersey Company? A Yes.

Q He sold the bonds of the old company, the Maine company, and the bonds of that company were converted into the bonds of the Jersey company, exchanged? A Exchanged so they were scattered around as the old bonds originally were.

Q Do you know from what source Wing & Russell bought the $650,000 of bonds that they got on the sale of those boats? A No.

Q Were they a part of the bonds which the Assets Realization Company held? A I don't know.

Q Do you mean they were not, or you don't know? A I don't know.

Q Who does know? There must be someone in your company who knows whether they gave up those bonds? A I never saw the bonds turned in by Wing & Russell; they were turned over to the trustee and I never saw them.

Q When was the first that you turned over any of the first mortgage bonds to Mr. Nicholson or his associates? A The date on which the entire transaction was closed and the money paid.

Q How many on that occasion did you turn over? A Eight or nine hundred thousand dollars.

Q Then you must have gotten into your control more than the $500,000 which the syndicate held? A I explained a short time ago I sold three blocks.

Q I understand that, but I am only concerned with the total aggregate of first mortgage bonds which were transferred either in one block or the other; I don't care how they were divided up; I want the total amount. A There was held by the syndicate or the Assets about $500,000; the Bank of North America $100,000, and the Navigation Company $345,000 or $350,000.

Q That made between nine and ten hundred thousand? A Yes.

Q Can you say that no part of this nine or ten hundred thousand of bonds were included in this six hundred thousand which were turned over by Wing & Russell to the trustee? A I cannot say, I don't know.

Q Who in the Assets Realization Company would know whether any of those bonds were in-

cluded in that? A I presume we have had a record of the numbers of our bonds.

Q And to whom they were turned over? A At the sale to which you referred?

Q Yes. A But we don't know the number of the bonds turned over to the trustee under the mortgage.

Q Have you records to indicate to whom you gave up the bonds which the Assets Realization Company owned? A To whom we sold them?

Q Yes. A Yes.

Q And to whom they were delivered? A Yes.

Q Have you records as shareholders' agent of the Bank of North American to indicate to whom the bonds of your bank were delivered? A Yes.

Q And are there in the records of the Hudson Navigation Company data to indicate to whom the bonds held by that company were delivered? A I presume so.

Q Can you produce from the files of the bank or yourself as shareholders' agent, the receipt or whatever data there is to show that fact? A I will produce all the records that I have bearing on it.

Q You will produce whatever records there are in the office of the Assets Realization Company? A Yes.

Q Are you still an officer in the Hudson Navigation Company? A No.

Q Besides the sale of this freight flotilla to Wing & Russell, was any other physical property sold to them? A No.

Q Who bought the wharves in Boston? A As I remember it, Mr. Canfield.

Q And did the sale of the wharves take place at the same time that the sale of the freight equipment took place? A Practically.

Q And in connection with that you delivered a similar set of papers and an appraisal and statement of account and resolution and deed or whatever at the time of the conveyance was necessary? A Yes.

Q That was executed here and sent up to Boston? A Yes.

Q And executed by you and the same gentlemen you mentioned before? A Yes.

Q For how much were the wharves turned over?

Mr. Faulks. I would like to inquire of the witness whether the agreement under which this sale was made is evidenced by anything in writing, or simply by verbal arrangement?

Witness. I think that was verbal.

Q That was part and parcel of the other suggestion of Mr. Robbins for the general closing out of this matter? A Yes.

Q How much was paid for the sale of the wharves? A For the equity in the wharf I think it was $350,000.

Q And the freight boats went for what? A $650,000.

Q So it totaled a million dollars? A Yes.

Q You think Canfield was the purchaser? A Of the wharf.

Q Do you remember his first name?

Mr. English. Any objection to his referring to his paper on that?

Mr. Faulks. No.

A I have no memorandum as to who the purchaser of the wharf was.

Q How was the payment made of the wharf? A The wharf was not sold until after I had re-

signed from the company. An agreement for the sale of it, however, was made.

Q Was it a verbal agreement as you described? A No, there was a written agreement.

Q When was the written agreement drawn up? A About the same time, that is, between the middle of February and first of March.

Q And that agreement was between what parties? A Between the Metropolitan Steamship Company and the purchaser.

Q Do you remember the name of the purchaser? A As I stated, I think it is Canfield, I am not certain.

Mr. Faulks. I now move to strike out the evidence the witness has given with regard to the sale of the Boston wharf or the equity of the company in that property, upon the ground that it now appears that there was an agreement covering the sale of that property or that equity, and it was not a verbal one, but one in writing.

Q Do you know where the original of that agreement is now? A I understood you to ask me as to the agreement between the Assets company and the purchaser of our securities, with relation to the sale of that wharf.

Q We misunderstand each other. Was the written agreement which you have just been talking about the agreement between your interests and Mr. Nicholson's for the sale of the securities, or some other written agreement? A The agreement which I now speak of was the agreement of the steamship company for the sale of the property.

Q The physical property? A Yes.

Q Then there were two sets of written agreements gotten up between the Assets Realization Company as the holder of the securities, and Mr. Nicholson for the transfer of the securities? A Yes.

Q And another between the Metropolitan Steamship Company of New Jersey as the holder of the physical property, and the purchasers of that property; is that correct? A Yes.

Q How many agreements were there for the sale of the physical property? A Meaning between the company—

Q Executed by the company on the one part and anybody else on the other. A Two.

Q One for the sale of the freight flotilla? A Yes.

Q And one for the sale of the docks? A Yes.

Q Do you remember when either of them was executed? A Between the middle of February and first of March, 1910.

Q Both were executed before the agreement for the sale of the securities was executed? A Yes.

Q And they were all executed as a part of the negotiations which had preceded between you and Mr. Robbins? A Yes.

Mr. Faulks. It now appearing that the sale of the freight boats and other equipment was covered by an agreement in writing, I also move to strike out whatever the witness has said with reference to the terms of that sale, it having been testified to before that that was a verbal arrangement, and it now appearing that it was an arrangement covered by an agree-

ment in writing; that agreement in writing is the only evidence that we think is competent as to the terms of the agreement.

Q Do you know in whose possession either of those original agreements now are? I am speaking now of the agreements for the transfer of the physical property. A I think they are in the possession of the steamship company.

Q The Metropolitan Steamship Company, the defendant company? A Yes.

Q Have you in your possession a copy of either of those agreements? A I think so.

Q Then, as I understand it, the agreement for the sale of the freight flotilla was consummated before the closing out of the sale of the securities, is that right? A I am not certain.

Q Are you certain as to whether or not the transfer of the dock property preceded or came after the transfer of the securities? A The actual transfer of the dock property was subsequent to the sale of the securities.

Q Following? A Yes.

Q And the other you think was before? A Do you mean the agreement for the sale of them?

Q I mean the actual turning over, the delivery of the deed and the resolution and all that. A I am not certain.

Q It might have been afterwards? A Yes; I am not certain, I don't know.

Q When was the resolution of the Metropolitan Company for the sale of the freight flotilla; was it passed before or after the transfer of the securities? A Before.

Q And when was the resolution passed for the sale of the docks, before or after the transfer of the securities? A Before, I think.

Q Both of those resolutions were a part of the suggestion of Mr. Robbins in his negotiations? A Yes.

Q Do you know what consideration was paid by Mr. Canfield or whoever the purchaser was, for the transfer of the dock properties? A $350,000.

Q All bonds? A Yes.

Q First mortgage bonds? A Yes.

Q Of the defendant company? A Yes.

Q And they were delivered to the trustee under the mortgage? A I presume so.

Q As was the case in the freight boats? A Yes.

Q Do you know where those bonds came from? A No.

Q Can you say whether they were a part of the bonds held by either the Assets Realization Company, the Bank of North America or Hudson Navigation Company? A I don't know.

Q You think that took place after the transfer of the securities under the agreement with Mr. Nicholson? A Yes.

Q Do you know what bonds are now outstanding of this defendant Metropolitan Company? A $2,000,000.

Q Do you know who holds them? A No—that is, I know where a few blocks are, of course.

Q Do you know how many of the $675,000 bonds which the Hudson Navigation Company held are still outstanding? A I believe they

still own them; they still hold about $330,000 or $340,000.

Q About half are gone? A Yes, about half gone.

Q And that half had been canceled? A That half we sold—I sold by this general sale.

Q Do you know that since the sale by you they have been turned over to the trustee and canceled? A I don't know; I have no method of tracing the exact numbers of the bonds.

Q Have you any connection with the Hudson Navigation Company yet? A No.

Q Do you know whether any of the bonds which were held by the Assets Realization Company are still outstanding? A I don't know.

Q Or do you know whether any of the bonds held by the Bank of North America are still outstanding? A No, I do not.

Q When were you president of the Hudson Navigation Company? A I retired in, I think, May of this year.

Q And for how long previous to that had you been the president? A About three years.

Q When you became president did it hold these $675,000 of the bonds, or were they acquired during your term of office? A They were acquired prior to my term of office.

Q You inherited them, so to speak? A Yes.

Q Did you make any effort during your term as president of the company, to get rid of them, sell them? A Yes.

Q With whom did you negotiate? A Several brokers' houses.

Q Did you deal with Mr. Fernald of Boston? A Yes.

Q Do you know who on behalf of the firm of Wing & Russell was the actual purchaser at that sale? A No.

Q What member of that firm? A No.

Q Was it Mr. Wing, or don't you know? A I don't remember.

Q Do you know who the president of the First National Bank of Boston is? A Yes.

Q What is his name? A Mr. Wing.

Q Is he any relation to Mr. Wing of Wing & Russell? A Brother, I believe.

Q Do you know Mr. Mellen, the former president of the New Haven Railroad? A I have met him.

Q Do you know whether he had any connection with the First National Bank of Boston?

Mr. Faulks. Objected to as immaterial and incompetent.

A I understand he is a director there

Q Was he a director there at the time that Mr. Wing was president, and at the time that this sale of the freight boats to Wing & Russell took place?

Mr. Faulks. Same objection.

A Yes.

Q Do you know whether Mr. Canfield has any connection with the First National Bank of Boston? A I don't know.

Q Where does Mr. Canfield live? A I don't know that.

Q Is he a New Yorker or New Englander? A I don't know that.

Cross examination by Mr. Faulks.

Q You were one of the reorganization managers of the Metropolitan Steamship Company of Maine, spoken of in the bill of complaint as the Maine Company No. 1, were you? A Yes.

Q The other managers being Mr. Hornblower and Mr. George E. Shaw? A Yes.

Q At the time the original reorganization agreement under which you were acting was prepared, you held what office with the Assets Realization Company? A I was the vice-president.

Q Who was the president of that company at that time? A Mr. George E. Shaw.

Q Who was the Mr. Henry Hornblower who formed the third member of the board of reorganization managers? A He was of the firm of Hornblower and Weeks.

Q Brokers? A Bankers in New York and Boston.

Q Did the Assets Realization Company at that time own any stock or other securities which had been issued by the Maine Company No. 1? A No.

Q Did you or any of the other of those reorganization managers own any of such stock or securities at that time? A Yes, Mr. Hornblower's firm held a block.

Q Do you know how large a block that was? A I think he had $100,000 or $120,000 worth of the first mortgage bonds; then Mr. Hornblower was also representing the First National Bank and their friends that had $100,000 of the unsecured notes.

Q Was this board of reorganization managers organized before or after the foreclosure proceedings against the Maine Steamship Company No. 1 were begun? A Afterwards, a year or more.

Q Was this board organized for the purpose of having it acquire the properties of that company that were involved in the foreclosure proceedings? A Yes.

Q And having it acquire those properties on behalf of the Assets Realization Company? A I don't follow the question.

Q Was the board of reorganization managers formed for the purpose of having it acquire the properties of the Maine Steamship Company No. 1 that were to be sold under the foreclosure proceedings on behalf of the Assets Realization Company? A No, they were to be acquired on behalf of a syndicate which we were forming at that time; when I say "we," I mean the three managers.

Q You have used the term "the syndicate" and the term Assets Realization Company interchangeably here several times this morning. The syndicate was really the Assets Realization Company, was it not? A As a final result, the Assets Realization Company, I think, had about ninety per cent of the syndicate.

Q And the syndicate was acting on their behalf, is that right? A The Assets company held ninety per cent. interest in the syndicate.

Q Who made the purchase at the foreclosure sale? A I did.

Q On behalf of the reorganization managers? A Yes.

Q Did you buy at that sale any property other than that which you have described this morning, namely, the boats and freight equipment and the wharves or wharfage rights that the company had? A No.

Q You didn't buy any of its accounts or bills receivable? A No.

Q And as a result of that sale you didn't receive any cash; there was no cash turned over? A To us?

Q To you as purchasers? A No.

Q You did not turn over to the defendant, the Metropolitan Steamship Company of New Jersey, any property other than that which you acquired through this sale, did you? A We subsequently acquired what the receivers termed the liquid assets, meaning traffic balances, unexpired insurance, which we turned over to the new Metropolitan company.

Q What were the traffic balances? A Balances due from other railroads, exchange on freight.

Q The accounts receivable of the receiver? A Yes.

Q Do you know what the value of those traffic balances were? A No; I know the aggregate of the unexpired insurance and all of these other items was about $275,000.

Q Was that the face value or the actual value? A I think that was actual value.

Q How was that actual value determined? A We determined the value of insurance, the unexpired value; and the accounts, a fair allowance was made for the bad accounts.

Q What else was there beside the liquid assets that were purchased by you at that sale and afterwards turned over to the New Jersey company? A I don't remember the different items.

Q Those are the only two classes of items that you can think of now? A Yes.

Q Was there any cash turned over to the new company when the properties were transferred to it? A No.

Q You furnished them with no capital? A Yes, we furnished them with working capital, taking their notes for it.

Q When you say "we," who do you mean? A The syndicate.

Q How much was furnished in the way of working capital at that time? A I don't remember.

Q Whatever was furnished was furnished simply in the form of a loan and secured by its notes. Exhibit C. 1, which has been referred to as the original reorganization agreement for the old Maine Company No. 1, is part of the plan of reorganization and shows what purports to have been the debts of the Maine Company No. 1 at the time the plan was prepared? A Yes.

Q Were those tables which appear on page A3 of this exhibit prepared under your direction or the information procured under your direction? A They were taken off the balance sheets furnished by the receivers.

Q You accepted them as showing the actual indebtedness of the Maine Company No. 1 at that time? A Yes.

Q And as far as you know, they did represent its actual indebtedness at that time? A They increased somewhat.

Q The debts increased? A Yes.

Q Beyond the figures shown here on page A3? A Yes.

Q And so increased prior to the time that you bought the property at the receivers' sale? A Yes.

Q Do you know how much they increased between the time this table which was prepared, which appears to have been as of December 31, 1908, to the time of the sale? A I don't remember the exact amount.

Q Was it a substantial amount? A Yes.

Q Several hundred thousand dollars? A I wouldn't say that; I would say $50,000 at least.

Q That is your best recollection of the figures? A Yes.

Q Have you in your possession, or has the Assets Realization Company in its possession, any data which would show the amount of that increase in the indebtedness of the Maine Company No. 1 more accurately than you are able to give it? A It can be made up from the accounts of the syndicate.

Q And those are still in your possession? A Yes.

Q As a result of the carrying out of this plan of reorganization as afterwards amended, what securities of the new company, the New Jersey company, did the syndicate receive?

Witness. May I refer to my memorandum?

Mr. English. Certainly.

A $553,000 of the first mortgage bonds, $500,000 two-year notes, $449,000 ten-year notes; I think that was all, as a result of that plan. Subsequently, for the moneys we furnished the company, we took over their demand notes.

Q Before you go into that—what other of its securities issued as the result of the carrying out of the amended plan of reorganization to someone other than the syndicate? A I would say carrying out of that plan of reorganization, there was issued $3,000,000 on the first mortgage bonds.

Q Did they all go to the syndicate? A Yes.

Q What else went to the syndicate, anything beyond the securities that you have just men-

tioned? A Yes, all of the securities, I might state, went to the syndicate, and the syndicate had agreements with the bondholders' committee and with the creditors' committee.

Q Let me see if I correctly understand what securities originally went to the syndicate; there was the $3,000,000 of the first mortgage bonds? A Yes.

Q What amount in— A $500,000 in two-year notes.

Q What amount in ten-year notes? A $1,500,000 in ten-year notes.

Q What other securities? A A million and a half in stock.

Q Is that stock all of one class, all common stock? A All one class.

Q These are all of the securities that the New Jersey company issued as the result of the carrying out of the plan—the amended plan of reorganization? A Yes.

Q The syndicate did not retain all those securities? A No.

Q What disposition did it make of them? A We exchanged the bonds of the new company for the bonds of the old company.

Q Under the agreement with the— A With the bondholders' committee.

Q The carrying out of that agreement with the bondholders' committee by means of this exchange resulted in what distribution of the first mortgage bonds? In the first place, how many were retained by the syndicate, and in each case I am asking you to testify as to par values? A If you will, let me explain my way; the syndicate took the three million of bonds—two and a half million, I believe; the

total of that used to exchange with the bondholders of the company.

Q Then two millions and a half of these bonds went out of the possession of the syndicate and into the possession of the bondholders' committee? A Yes.

Q For the bondholders of the old company? A Yes.

Q What became of the other $500,000 of those bonds which the syndicate received? A Some of them were used in the settlement of lien claims.

Q Lien claims which were existing upon the property of the company at the time of the sale? A Yes.

Q How many of them were used for that purpose? A I cannot remember, perhaps $75,000.

Q Did the use of such bonds for that purpose serve to wipe out those lien claims entirely? A Settlements we made with them by which they were to take part cash and part bonds.

Q At what price were the bonds used in those settlements? A We were settling lawsuits, and my recollection is, we would talk about the bonds at par and the claims at par.

Q What I am getting at is this: you say there were certain lien claims upon the property of the company at the time it was purchased by the syndicate? A Yes.

Q I want to know, in the first place, whether those were all satisfied before the property was turned over to the new company, the New Jersey company? A Yes, they were.

Q They were satisfied by arranging settlements, as a result of which part cash and part bonds were paid to the lien claimants? A Yes.

Q In those settlements were the bonds turned over at their par value? A Yes.

Q That is, if a man had a lien claim of $25,000 and as part of the settlement that was made he was to receive $10,000 in cash, only $15,000 of bonds would be turned over? A Yes.

Q Was that the process in every instance, so far as you can recollect? A No, there were only three instances where we used part of the bonds to settle these claims.

Q The rest of the claims were satisfied in cash? A Yes.

Q The moneys necessary for that purpose were advanced by the syndicate? A Yes.

Q And how did it reimburse itself for those expenditures? A The syndicate?

Q Yes. A From the remaining bonds and two-year notes.

Q You mean by taking certain bonds and certain of the two-year notes in payment of the claim which it thus had? A They provided the cash and received that; they received these bonds.

Q From the bonds which they did hold; that is, from the balance of $500,000 bonds which they retained? A Yes—I want to amend one answer; I said two and a half million was turned over to the bondholders' committee. While that was about the amount of the outstanding issue, all of the bonds were not in, so they received a lesser amount than two and a half million of those bonds.

Q Can you tell us about what amount of those bonds they did receive? A I think about $2,350,000.

Q That left the syndicate with $650,000? A Yes.

Q Did any of that $650,000 afterwards come to the bondholders of the old company, or were they all retained by the syndicate and used in satisfaction of those lien claims? A From memory, I should say about $75,000.

Q What was done with the remainder of them? A The remainder of them the syndicate held and afterwards sold.

Q No portion of the proceeds of that sale resulted to the benefit of the Metropolitan Steamship Company of New Jersey, did it; no money went into its treasury as the result of that sale? A Of the securities by the syndicate?

Q Yes. A Yes.

Q How? A As part of the agreement of sale, the syndicate bought the note of the Metropolitan Steamship Company of $95,000; gave them the cash and sold that note. That is in addition to the other amounts and notes which they had loaned prior to that date.

Q I don't understand that, and I want to take up one thing at a time, so I will be sure to understand it. The syndicate had in excess of $500,000 of the par value of those first mortgage bonds left after it satisfied the lien claims and made the exchange with the bondholders' committee of the old company, didn't it? A Yes.

Q The syndicate sold those bonds? A Yes.

Q What amount did it receive on that sale? A It sold the bonds and notes en block.

Q What notes formed part of that sale? A There was $500,000 of the two-year notes which the syndicate had taken; there were some ten-year notes and there were notes which they had

taken for moneys furnished the company to operate it.

Q That sale en block you spoke of, was that that the sale to Mr. Nicholson? A Yes.

Q Then they hadn't sold any of these securities before then? A No, I don't think they had.

Q I had rather gotten the impression that the syndicate had disposed of some of it? A No.

Q So you now say that the syndicate, in so far as it did not use the securities which it obtained upon the formation of the New Jersey company to satisfy the lien claims or in exchange for the bonds of the old company, it retained all of such securities at the time of the sale to Mr. Nicholson? A Yes, there may have been sales of a few amounts, but the amount is nominal.

Q How much money did the syndicate loan to the new company? A I don't remember the exact amount.

Q What was the approximate amount? A At least $200,000.

Q And as security for that loan, what did it receive from the new company? A Notes.

Q To what amount? A To the amount of the—

Q To the amount of the loan? A Yes.

Q Did it receive any collateral in addition to those notes? A No.

Q And those notes had not been paid off at the time the sale to Mr. Nicholson was made? A No.

Q Had no payment been made on account of them? A No.

Q Had any interest been paid on account of them? A No.

Q And those notes formed part of the securities that were sold to Mr. Nicholson in March 1910? A Yes.

Q Are you personally a stockholder in the New Jersey Company now? A I don't think so.

Mr. English. The defendant Metropolitan Steamship Company?

Mr. Faulks. Yes.

Q So far as you know, has that company ever declared a dividend? A No.

Q How long had you known of the Maine Steamship Company No. 1 prior to the date it went into the hands of a receiver in the foreclosure proceedings? A I had known of it perhaps a year or two.

Q Had it ever paid a dividend, as far as you know? A Not to my knowledge.

Q What amount of the two year notes did the syndicate receive as a result of the reorganization plan? A Of the two year notes, all of them, I think.

Q And of the ten year notes? A Four of five hundred thousand dollars.

Q Who received the balance of those notes? A The creditors, through the creditors' committee.

Q They went to such committee through the syndicate, did they not? A Yes.

Q So the syndicate received all of the ten year notes? A Yes.

Q How many of them did it transfer to the creditors' committee? A I don't remember the exact amount.

Q The difference between the entire amount of the issue and the amount which you have said was retained by the syndicate? A Yes.

Q Who was interested in this syndicate beside the Assets Realization Company? A There were two or three of our friends.

Q Was the syndicate acting on behalf of the Hudson Navigation Company and the Bank of North America as well as the Assets Realization Company? A The stock as originally planned and the funds necessary for the syndicate was provided, one-half by Mr. Hornblower and one-half by us—when I say "By us," I mean Mr. Shaw and myself; we were interested largely in the Hudson Navigation Company; they had a large block of the bonds. There were liens on these steamers to the extent of a million dollars or more and we wanted to protect our property.

Q Liens upon which steamers? A The Harvard and Yale.

Q Liens represented by mortgages? A No, builders' liens.

Q And were those liens paid off as a result of the carrying out of the reorganization plan? A Yes.

Q Out of what money? A The moneys provided by the syndicate.

Q For the furnishing of such moneys, how was the syndicate compensated? The only lien claims that you have spoken of before were, as I had supposed, claims for comparatively small amounts; did they include this million or more lien claims on the Yale and Harvard that you have now mentioned? A Yes.

Q Were those lien claims on the Yale and Harvard satisfied partly in cash and partly by the use of the bonds of the new company? A Very largely, almost entirely in cash.

Q That cash was furnished by the syndicate? A Yes.

Q And for the cash so furnished by it, it received the securities of the new company; that was part of the consideration for the issuance of the securities of the new company to it? A Yes.

Q Did the Assets Realization Company receive any of the bonds of the new company except such as the syndicate retained after it had disposed of the bonds that it was required to dispose of? Was it a bondholder in the old company? A No.

Q I think you mentioned the amount of bonds which were eventually held for the Assets company as being in the neighborhood of $500,000? A About $500,000.

Q The Hudson Navigation Company received these bonds of the new company in exchange for bonds which it held in the old company? A Yes.

Q And as the result of that old bondholding it received approximately $675,000 of the bonds of the new company? A Yes.

Q The Bank of North America received how many of the bonds of the new company? A $100,000.

Q And all of those bonds were included in the sale to Mr. Nicholson? A Yes.

Q Were there other bonds included in that sale, other bonds of the Metropolitan Steamship Company of New Jersey? A No, I don't think so.

Q How long were you an officer of the New Jersey company after its organization? A A few months.

Q It was organized in November, 1909, was it not? A Yes.

Q That was after the close of the navigation season of 1909? A Yes.

Q The Yale and Harvard were not then operated until the following spring, were they? A No.

Q Were they put in service before you retired as an officer of the company? A No.

Q So that you never had any participation in the New Jersey company during any time that those boats were in operation? A No.

Q Did the New Jersey company carry on the business of operating the freight boats during that period? A Yes.

Q With what result? A You mean as to making the money?

Q Yes. A The freight business was not profitable.

Q That portion of the business was carried on at a loss? A Yes.

Q The period to which I have referred is the one extending from November, 1909, to the first of March or thereabouts, 1910? A Yes.

Q How much money did the company lose in the operation of the freight boats during that time?

Mr. English. If you know.

Mr. Faulks. He was the president of the company, at least a director.

A I cannot tell from memory; of course, there were the carrying charges on the Harvard and Yale that were not operating; the losses on that—I am unable to tell.

Q What is your best recollection of the amount of money that the company lost in its

operation during that period of four months? A I wouldn't attempt to fix the figures.

Q Are you sure that Mr. Robbins was present on the day that the contract with Mr. Nicholson was signed at your office; aren't you wrong about that? A My recollection is that he was there.

Q The contract was signed at the office of the Assets Realization Company? A Yes.

Q And who, according to your recollection, was present at that time? A Mr. Chase had been down the day before the signing of the contract and gone over it very carefully; my recollection is that Mr. Chase and Mr. Robbins were there; it is possible I may be mistaken.

Q Who prepared the contract? It was prepared by counsel, I suppose? A By counsel.

Q The counsel for the Assets Realization Company on one hand and for Mr. Nicholson on the other hand? A Yes; our regular counsel was away at that time. I believe that was prepared by Mr. Robbins and Mr. Robert C. Morris.

Q You think Mr. Chase was at your office the day before the contract was signed? A Yes.

Q Had you met him before that? A Once before, I think.

Q And on this occasion, the day before the contract was signed, Mr. Chase went over the contract? A Yes.

Q And were any alterations made in it at that time? A The contract was in course of preparation for a week, and there had been changes made in it almost every day during that time.

Q And Mr. Chase had appeared and taken part in the making of those changes? A Yes.

Q As counsel for Mr. Nicholson, as representing Mr. Nicholson? A Yes.

RECESS.

Q Mr. McKinnon, this morning you testified to some appraisals that had been made in connection with the sale of freight boats to Wing & Russell and the sale of the dock property to Mr. Canfield in March, 1910. You said the appraisers were appointed as follows: one by the trustee, one by your syndicate and the third by Mr. Chase. By the trustee, did you mean the trustee under the first mortgage of the defendant company? A Yes.

Q Each of these three appraisals was made separately, was it? A Yes.

Q And each reached about the same figure; the difference, as I understood you to say, was small? A That is correct; yes, sir.

Q Was the purchase price which was afterwards paid in the surrender of bonds the average of the three appraisals thus made? A Yes. I want to correct two statements that I made this morning, as my recollection was refreshed: first, as to the amended plan, I should have said that the plan as set forth in the Exhibit C. 1 was carried out and three millions of stock was issued. Then under an agreement with the bondholders' committee, one-half of that stock was retired and in place of it was issued the ten-year notes. And the second correction I want to make is, that the bonds given in payment for the freight vessels sold were turned over to the trustee under the terms of

the trust deed and were not canceled, but are kept alive today.

Q What about the bonds that were turned over in connection with the sale of the dock property? A Undoubtedly the same, but that was subsequent to my connection with the company.

Q Was this arrangement by which one-half of the common stock was retired and the $1,500,000 of ten-year notes taken, under any agreement in writing? A Yes; I believe simply letters passed between the reorganization managers and the creditors' committee.

Q How soon after the incorporation of the New Jersey company was that accomplished? A Practically at the same time.

Q So that it was really part of the reorganization of the company? A Yes.

Q That occurred sometime before you resigned as a director of the company? A Yes.

Q Probably in the year 1909, the company having been formed in November, 1909? A Yes.

Re-direct by Mr. English.

Q When the negotiations between you and Mr. Robbins and the others which resulted in the sale of the securities took place, had the million and a half of stock been retired and the notes issued instead? A Yes.

Q How long before that had that been the situation? A A couple of months, perhaps.

Q So that at the time of those negotiations there were $1,500,000 of stock outstanding, already authorized and issued? A Yes.

Q How much stock of the New Jersey corporation did the Assets Realization Company

get on the reorganization or formation of that company? A We sold all we had, about one-half—no—

Q Half of the three million? A Almost all of the stock.

Q At the time of the reorganization? A Yes.

Q You spoke of having paid to the Metropolitan Company of New Jersey the sum of $95,000 at the time of this transfer in exchange for a note; has that note since been paid? A That note I sold with our other securities.

Q To whom did you sell it? A To Mr. Nicholson.

Q So out of the cash which you got on the sale to Mr. Nicholson you bought a note of the Metropolitan company for which you paid $95,000, is that it? A Yes.

Q And then as part and parcel of the arrangement with Mr. Nicholson you gave him that same note? A Yes.

Q That was only another way of giving back to Mr. Nicholson $95,000 of the money he paid you wasn't it? A It reduced the amount of money we received by $95,000.

Q Was that in the nature of a commission? A No; oh, no, the company needed funds.

Q The check for $1,500,000 which was paid you at the time of the transfer of the securities included in it or had included as a part of that amount this sum of $95,000; $95,000 you afterwards paid back to the New Jersey Metropolitan Company, isn't that true? A Yes.

Q So that as far as the net result was concerned, it was as though they had given you a check for $1,400,000 less $95,000? A Yes.

Q Was there any understanding between you and Mr. Nicholson, or with any of Mr. Nicholson's associates, as to the continuance of the operation of the Harvard and Yale between Boston and New York? A Yes.

Q What was that understanding and with whom was it made?

Mr. Faulks. We object to this question; first, that it is irrelevant, immaterial and incompetent under any issue in this case; and second, that whatever negotiations or understanding were had between Mr. McKinnon and Mr. Nicholson or his representatives were merged in the written agreement which the witness says was executed on or about March 4, 1910.

A My understanding with Mr. Robbins was that the service of the Harvard and Yale would be maintained between New York and Boston.

Q And did that understanding in any way influence you in your agreement to sell the freight equipment?

Mr. Faulks. Objected to as immaterial and irrelevant.

A Yes.

Q Since lunch have you been able to find copies of the papers in connection with the transfer of the freight boats to Messrs. Wing & Russell? A Yes, sir.

Q And do you produce them? A What I produce are copies.

Q Then you produce a copy of a letter signed by the Metropolitan Steamship Company, by John W. McKinnon, president, to American Trust Company, trustee under the mortgage from the Metropolitan Steamship Company to

the American Trust Company, dated November 15, 1909, which letter was dated January 18, 1910, and also a copy of a resolution of the board of directors of the Metropolitan Steamship Company of New Jersey, signed by Campbell Carrington, secretary; also a copy of a written statement, signed by George E. Shaw and John W. McKinnon, directors of the Metropolitan Steamship Company of New Jersey, to the effect that the sale of the freight boats was a judicious thing, and a letter or certification of Martha C. Longendyke, a notary public, to the affidavit of Messrs. Shaw and McKinnon to their statement; is that correct? A That is correct.

Mr. English. I offer that in evidence. Have you any objection.

Mr. Faulks. No, but we move to strike out the evidence of the witness given this morning as to the transactions covered by these papers, on the ground which was then urged as an objection to the reception of that evidence; namely, that the papers themselves were the best evidence of the terms of the agreement of sale.

(Letter dated February 18, 1910, and papers thereto annexed, marked Exhibit C. 5.)

Q It appears from the resolution of the directors, which is included in this Exhibit C. 5, that the freight boats had been operated at a loss, but that the Yale and Harvard had been run profitably, and that it was the purpose and intent of the New Jersey company to retain the Yale and Harvard, and maintain the passenger service carried on by the vessels between the

ports of New York and Boston as heretofore?
A Yes.

Q Did you have any understanding with Mr. Robbins relative to the continued operation of the Yale and Harvard?

Mr. Faulks. I object to that as incompetent and as not in any way binding upon the defendant company or the individual defendants. Any understanding must be regarded as having been merged in the formal agreement which was finally executed, and evidence in regard to it is therefore not admissible.

A Yes, as I stated before, I had an understanding with Mr. Robbins that the service of the Yale and Harvard would be maintained.

Q Did you and your associates in the board of directors of the New Jersey company, the defendant, consent to this sale of the freight boats at the request of Mr. Robbins and as part of your negotiations with him, or simply was it of your own motion?

Mr. Faulks. Same objection.

A It was part of the entire understanding.

Q Was it at his suggestion?

Mr. Faulks. Same objection.

A Yes.

Q And at his request? A Yes.

Q And did he provide the purchaser?

Mr. Faulks. Same objection.

A Yes.

Q During the negotiations did he say he would provide a purchaser if you would consent to the sale?

Mr. Faulks. Same objection.

A Well, I do not know just what he said, but he did provide a purchaser.

Q At the time he suggested to you that you make this sale, did he say he then had a purchaser or would provide one?

Mr. Faulks. Same objection.

A I am unable to remember the exact language or the date, as to whether he had or would provide a purchaser.

Q It was either one or the other? A Either one or the other.

Q And that situation is true also of the sale of the wharf properties in Boston?

Mr. Faulks. I make the same objection and the further objection, that the question is not a proper one, in that it asks the witness to characterize something that was said or done, instead of saying what was said or done.

A Yes.

Q During your negotiations with Mr. Robbins, was it suggested by him that your company, the New Jersey company, should also sell the wharves in Boston?

Mr. Faulks. I make the same objection on the record to this as I did to the questions put to the witness a moment or two ago in reference to the sale of the freight boats.

A Yes.

Q Did you and your other directors resolve that the sale be made at his request?

Mr. Faulks. I make the same objection, and the further objection that the purposes of the resolution are set forth in the reso-

lution itself, not only the purposes, but the reasons why the resolution was passed.

A Yes.

Q And did he say that he then had or would secure a purchaser?

Mr. Faulks. Same objection.

A Yes.

Q Either one or the other? A Yes.

Q It appears from this same resolution which is attached to Exhibit C. 5, that the officers of the defendant company were to take such steps as might be necessary to secure the release by the trustee under the mortgage from the lien of the mortgage as applying to these freight boats; did you as president of the company make any efforts to bring about the lifting of the lien as applied to these freight boats? A Yes.

Q It appears from the resolution annexed to Exhibit C. 5, that it was dated February 18, 1910, and the letter addressed by you to the American Trust Company bears date the same day, February 18, 1910. Did you write that letter as the result of that authority of the board of directors? A Yes.

Q And what was the result so far as securing the lifting of the lien on the freight boats was concerned? A The trustee after having an appraisement of the freight boats made released them from the lien of the mortgage.

Q In connection with that were the bonds deposited with the trustee which you referred to this morning? A Yes.

Q And was the deposit of the $650,000 of bonds the consideration which induced the trustee to release the lien? A Yes, undoubtedly.

Q So that when those boats were turned over to Wing & Russell, they went over free of the lien of the mortgage? A Yes.

Q And do you recall whether a similar procedure was taken with reference to the Boston wharves? A That was subsequent to my connection with the company.

Q You were out of the company at that time? A Yes; we made an agreement for the sale of it, but it was not consummated until some time after.

Q An agreement to be sold lien free, or don't you remember that? A Yes, I think we only had an equity there; there was a mortgage separate from the bond issue on that wharf property and I believe we agreed to sell it subject to that outstanding mortgage of, I think, $500,000.

Q Since lunch have you been able to find and do you now produce a copy of the agreement which was entered into between Mr. Douglas Nicholson and the Assets Realization Company for the transfer of the securities? A Yes.

Q Is that the paper which you produce and which is a copy of the original? A That is an original.

Q That is a duplicate original? A Yes.

Q Kept by the Assets Realization Company? A Yes.

Q And it bears the seal of the company? A Yes.

Mr. English. I offer in evidence a duplicate of the agreement between Douglas Nicholson, of the one part, and the Assets Realization Company of the other part, dated the fourth day of March, 1910, referred to by the witness as the agreement

for the transfer of the securities of the defendant company.

(Marked Exhibit C. 6.)

Mr. Faulks. I now move to strike out the evidence given by the witness this morning with regard to the contents of this agreement, on the ground that the agreement itself, now being produced and admitted in evidence, such oral testimony with regard to its contents is incompetent. In other words, I base the motion upon the same ground on which I objected to the oral evidence itself this morning.

(It is stipulated and agreed by counsel for all the parties, that inasmuch as the witness produces an original paper, a true copy thereof may be substituted by the Master, of Exhibit C. 6, and that the same stipulation shall apply to Exhibit C. 5, and the Master permitted to substitute in the place of the original Exhibit C. 5, a copy thereof.)

Q Just look at this Exhibit C. 6 and see if that refreshes your recollection as to how many shares of stock out of the 15,000 shares outstanding you were able to turn over on this transfer? A I turned over 14,323 shares out of the 15,000.

Q I notice that the purchase price stated in this agreement to be paid by Mr. Nicholson was $1,400,000 and $100,000? A Yes.

Q Why was it split up in two parts like that? A $1,400,000 for the securities which had been acquired by the syndicate; and $100,000 for certain securities held by the National Bank of North America, that prior to the exe-

cution of this agreement I had been authorized to sell by the court.

Q Did this agreement, Exhibit C. 6, cover the transfer of the bonds held by the Hudson Navigation Company, or was that in some separate paper? A I think that was in a separate agreement.

Q Do you know whether the bonds of the Hudson Navigation Company went to Mr. Nicholson or to Mr. Canfield, who you said also appeared at that time as a purchaser? A I am quite sure they went to Mr. Canfield.

Q Was there a separate written agreement between your company and Mr. Canfield in relation to that, or was that simply part of the general understanding? A That written agreement would be between the Hudson Navigation Company—

Q If there was any written agreement? A Yes.

Q Have you any recollection one way or the other? A I think there was.

Q That explains why it was there were three separate cashier's checks taken over, as you stated this morning? A Yes.

Q One for the Assets Realization Company? A Yes.

Q One for the Bank of North America's interests? A Yes.

Q And one for the Hudson Navigation Company? A Yes.

Q Do you remember on whose bank or what banks those checks were drawn? A I do not.

Q They were cashier's checks you said? A Yes.

Q But you don't remember on what bank they were drawn? A No.

Q Do you know whether they were drawn on the bank of the Manhattan company? A I do not; they were deposited by us in the Chase National Bank.

Q You banked in the Chase National Bank? A Yes.

Q Will any records in the possession of your Assets Realization Company show on what banks those checks were drawn? A Yes, I am quite sure they would.

Q Who has custody of these; Mr. Carrington as treasurer? A He can inquire at the office and ascertain.

Q It can be ascertained from your records? A Yes.

Q Will you, either you yourself or have Mr. Carrington, ascertain that so we can get the fact? A Yes.

Q I notice that this Exhibit C. 6 contains the guaranty of the Assets Realization Company, that the Metropolitan Steamship Company of New Jersey owns and will own at the time of the delivery of the securities sold by virtue of this agreement, all the property described in the mortgage of the Metropolitan Steamship Company to the American Trust Company, dated November 15, 1909, and that that property includes the lease of the India Wharf at Boston. What was the property which was referred to as having been designated in the trust mortgage dated November 15, 1909? A The Harvard and Yale, the freight steamers and Union Wharf.

Q In other words, the physical property which you bought from the receivers? A Yes.

Q This same agreement, Exhibit C. 6, however, contains an exception, in this language:

"Except that all the steamers of the company (referring to the defendant company) other than the Yale and Harvard have been sold and that the Union Wharf property in Boston, Massachusetts, has also been sold, and that the equity in the Fernald note and the claim against the Mercantile National Bank have been converted into cash." When it excepts all the steamers of the company other than the Yale and Harvard, does that refer to the sale of the freight boats to Messrs. Wing & Russell? A Undoubtedly.

Q And when it refers to the Union Wharf property, does that refer to the sale of what we have termed the Boston dock to Mr. Canfield? A Yes.

Q What was the Fernald note that you referred to? A That was an equity in a note of Mr. Fernald's with the bonds of this company as collateral that was pledged with Hornblower & Weeks. There was an equity in that note which was carried on the books of the company, and we had to take that out and substitute cash.

Q Where did the Metropolitan Company of New Jersey get the cash from; was it part of the money which was paid on this transfer? A As part of the sale of the securities, we agreed to cash out certain items that were carried on the books of the company.

Q You mean turn them into cash? A Buy them for cash.

Q Who got the cash? This agreement says that the equity in the Fernald note and claim against the Mercantile National Bank has been converted into cash; who got the cash? A The Steamship Company.

Q The Metropolitan Steamship Company? A Yes.

Q You turned certain securities which you held against Fernald and the Mercantile National Bank into cash and put the cash in the treasury of the company? A Yes, the company owned certain assets that the purchasers regarded as doubtful; we had to buy them and incidentally we still own them.

Q When you say "we," you mean the Assets Realization Company? A Yes.

Q You turned them into cash and the Metropolitan Company got the cash? A They got the cash.

Q That was turned over on the sale? A Yes.

Q I notice also that this same agreement, Exhibit C. 6, contains the guaranty of the Assets Realization Company to Mr. Nicholson and his assigns that at the time of the delivery of the securities and his payment therefor there will be no lien upon any property of the Metropolitan Steamship Company except the mortgage of the company to the American Trust Company. Is there any relation between that agreement and your efforts to wipe out the lien of the mortgage on the freight boats and the other Boston property?

Mr. Faulks. I object to that, one ground being that this agreement is subsequent to the date when, according to the testimony of the witness, a lien upon the freight boats had already been wiped out; and second, upon the ground that the question is incompetent.

A I do not think there is any relation between the two; I think that guaranty was simply practically a guaranty of title.

Q I see that this same agreement C. 6 contains the covenants of the Assets Realization Company to Mr. Nicholson and his assigns "that the minute book of the Metropolitan Steamship Company of New Jersey contains a full and true record of all corporate doings of the stockholders, directors and executive committee or other committees of the board of directors, and that no action of any nature whatsoever will be taken by the directors or stockholders of said Metropolitan Steamship Company prior to the delivery of said securities so held and the payment therefor, except as may be approved in writing by the said Douglas Nicholson or his assigns." Why was that put in the agreement? A I do not remember.

Q Were the minute books and other books turned over to Mr. Nicholson at the time of the general transfer? A Yes.

Q They are no longer in the possession of the Assets Realization Company or in your possession? A No.

Q I see that this same agreement, Exhibit C. 6, contains the recital that "since stock of the Metropolitan Steamship Company of New Jersey agreed to be sold to Mr. Nicholson includes the shares of stock held by the then present directors, and that after such sale the directors will have no personal interest in the results of the management of the Steamship Company, that therefore the Assets Realization Company further convenants with Mr. Nicholson and his assigns that the said directors will after the said sale take no action in the name or be-

half of said Metropolitan Steamship Company without first obtaining the written approval of Dohglass Nicholson or his assigns, as the owner of nearly all the capital stock of the company, and that the said directors will at the time or at any time after payment for the securities sold under this agreement take all such steps as may be demanded by the said Douglass Nicholson or his assigns which are legal and proper for the purpose of securing the replacing of said directors by other directors acceptable to a majority of the stockholders of the said Metropolitan Steamship Company.'' Do you know why that was put in the agreement? A No.

Q Was it not put in for the reason that the actual transfer of the stock on the books of the company did not take place until after the closing out of the matter at the Chase National Bank, and was designed to protect the new purchaser in his control of the company?

Mr. Faulks. We again object because that was to happen after the sale of these floats, after the delivery is made.

Mr. English. I said transfer on the books.

A Undoubtedly.

Q And was it as a result of that general agreement, that you held this meeting which you described this morning, when you and your co-directors and officers resigned and others were elected? A Yes.

Q I notice that the language of this agreement is that ''other directors acceptable to a majority of the stockholders of the said Metropolitan Steamship Company'' is used and not language to the effect that the directors should

be acceptable to Mr. Douglas Nicholson, and I ask you whether that recalls to your mind the fact that you knew that Mr. Nicholson was purchasing this stock and these securities, not for his personal use, but as a representative or in a trustee capacity?

Mr. Faulks. We object to that as immaterial and irrelevant and upon the ground that there is nothing in the language just quoted from the agreement that could possibly warrant such an inference or assumption.

A I have no recollection of the purpose of that clause.

Q Did Mr. Nicholson say anything to you to indicate that he was buying these outright on his own behalf or that he was buying it in representative or trustee capacity? A He said nothing to me on either phase of it.

Q Did anyone say anything to you as to his capacity? A No.

Q Did you have any knowledge on the subject? A No, no knowledge.

Q Who produced Mr. Nicholson as the purchaser on this occasion? A Mr. Chase I think—

Q Was Mr. Robbins present at the time when Mr. Nicholson was held forth as the purchaser? A I don't remember the first time I met Mr. Nicholson or who was there.

Q Do you remember in your negotiations with Mr. Robbins whether he stated that he would secure a purchaser for the securities of the company? A Yes.

Q Did he say he had a purchaser or would secure a purchaser? A He said he represented parties who were willing and able to purchase.

Q Did he disclose his principals? A No, not until negotiations were practically all agreed on.

Q And then who did he say his principals were? A Then he brought in Mr. Chase as the representative of the purchaser and then later Mr. Nicholson.

Q When he brought in Mr. Chase did he say who the purchaser was that Mr. Chase represented? A I don't remember.

Q When he brought in Mr. Nicholson what did he say about him?

Mr. Faulks. It does not appear that Mr. Robbins brought in Mr. Nicholson, but on the contrary Mr. Chase did.

Q I will find out. Did Mr. Robbins bring in Mr. Nicholson or was Mr. Robbins present when Mr. Nicholson first appeared on the scene? A I don't remember that exactly.

Q What is your recollection? A As a matter of fact, I looked to Mr. Robbins; he produced Mr. Chase, and then Mr. Nicholson came; whether they all came together or separately, I don't remember at this time.

Q But the responsible man to you was Mr. Robbins, is that right? A Yes.

Q Was it on the signing of this Exhibit C. 6 that Mr. Robbins intimated that he had better be out of the room?

Mr. Faulks. There is no foundation in the evidence for that question; I object to it upon that ground.

Q Was Mr. Robbins present when this agreement Exhibit C. 6 was signed? A No, I don't think he was.

Q Was he in the building? A No, I don't think he was.

Q Was it signed in the morning or afternoon or evening? A I think the afternoon.

Q Had Mr. Robbins been present earlier in the afternoon before this paper was signed? A Yes.

Q And did he either come to where you were or you and your associates go to where he was after this agreement was signed? A I think they were all at my office.

Q And did you see him examine this paper in your presence or was it there for him to look at if he cared to, after it was signed? A I don't know whether he looked at it after it was signed at all.

Q Did he look at it before it was signed? A Oh, yes.

Q And where and when? A That agreement was several days in course of preparation.

Q Is that where Mr. Robert C. Morris came in? A Yes.

Q He acted as your attorney? A Yes.

Q Was Mr. Robbins himself there negotiating with Mr. Morris? A Yes.

Q And you were there? A Yes.

Q Who else was there? Mr. Chase.

Q Anybody else? A No, that is about all, I think.

Q You four gentlemen had a series of negotiations and conferences in the preparation of this agreement? A Yes.

Q Namely, Robbins, yourself, Morris and Chase? A Yes.

Q Has Mr. Morris an office in New York? A Yes, Morris & Plante I think the firm is.

Q Where has he an office? A I think 115 Broadway, Robert C. Morris.

John W. McKinnon, re-cross.

Q In your negotiations with Mr. Robbins did he ever tell you why he wanted to acquire the securities of this company? A No, I don't think so; I don't remember.

Q Did you ever meet Mr. Charles A. Mellen, the president of the New Haven Road, in connection with the matter? A Yes.

Q Where and when? A His office.

Q Whereabouts? A Grand Central Station.

Q In New York? A Yes.

Q And when did you meet with him; I mean before or after the signing of this agreement, Exhibit C. 6? A Oh, several months before.

Q Who was present on that occasion? A I think only Mr. Mellen.

Q Just you and Mr. Mellen? A Yes.

Q Did you see him again after that first interview which you referred too? A Mr. Mellen?

Q Yes. A I think once.

Q In between that time and the date of the signing of Exhibit C. 6? A Yes, both interviews were several months prior to the signing of that agreement.

Re-cross by Mr. Faulks.

Q How long prior to the signing of this agreement was it that the negotiations which you say you had with Mr. Robbins which resulted in the signing of the agreement, were begun? A Probably a month.

Q Probably sometime in February of 1910? A Yes.

Q You didn't see Mr. Mellen in connection with these negotiations at all, did you? A No.

Q And he had no part in them as far as you know, did he ? A No.

Q This occasion when you saw him at the office of the railroad company in New York and the other occasion subsequent, when you saw him, was a long time before these negotiations were begun with Mr. Robbins? A Yes, several months.

Q The meeting at which you and the other officers and directors of the Metropolitan Steamship Company of New Jersey resigned, was held on the afternoon of the same day that the securities covered by the sale were delivered to Mr. Nicholson, was it not? A Yes.

Q Do you know when the stock purchased by him was transfered of record? A I do not.

Q The sale, I see by this agreement Exhibit C. 6, included 14,323 shares of the capital stock of the Metropolitan Steamship Company of New Jersey. What disposition, if any, had been made of the remaining 677 shares received by the syndicate? A That was all that the syndicate received.

Q I thought from what you said earlier in the day, that the syndicate received 15,000 shares? A Practically all issued to the syndicate and they had to deliver certain shares to the bondholders under an agreement by which they paid one or two past due coupons on the bonds in stock.

Q Was that agreement one that has been offered in evidence in this case? A It is in part of the plan.

Q Exhibit C. 1, as we call it? A Yes.

Q And in accordance with the provisions of that plan, then, these 677 shares representing the difference between the 15,000 issued to the syndicate and the 14,323 sold to Mr. Nicholson

were disposed of by the syndicate? A In accordance with the plan, yes.

Q And they went, as I understand, in exchange for unpaid coupons on the bonds of the old company? A Yes.

Q There was no reason, was there, for separating the total purchase price of $1,500,000 for the securities sold to Mr. Nicholson into the item of $1,400,000 and $100,000, except the fact that the latter amount represented a sum for which you were authorized by the court to sell the securities in which the stockholders of the Bank of North America were interested? A That was correct.

Q You wanted a separate record on that? A Yes.

Re-direct by Mr. English.

Q Mr. Carrington, who has just come into the room, has handed me what purports to be a receipt dated March 5, 1910, signed Metropolitan Steamship Company by Douglas Nicholson, Treasurer, "Received of Campbell Carrington the following," and then there is a list of the things received. Have you ever seen that before? A I presume I have.

Q And that contains a list of various papers and books which were turned over upon the consummation of the agreement C. 6? A Yes.

Mr. English. I would like to offer that receipt in evidence, dated March 5, 1910.

(Marked Exhibit C. 7.)

(It is stipulated by counsel for all parties that a copy of this exhibit may be substituted by the Master and the original returned to the witness.)

Q Do you remember whether at the time the lien of the mortgage on the freight boats was released by the trustee in Boston receiving a release from the trustee? A I do not remember the receipt of it, but this paper, Exhibit C. 7, indicates it was in the possession of the treasurer of the Steamship company.

Q Apparently you got a formal release from the trustee in Boston? A Yes.

Q Is that the paper which is referred to as the first of the six items in this receipt, Exhibit C. 7? A Yes.

Q And that release from the American Trust Company releasing the freight boats of the Metropolitan Steamship Company was turned over by you or your associates to Mr. Nicholson upon the consummation of the agreement, Exhibit C. 6? A Yes, turned over by Mr. Carrington who was the treasurer of the Steamship company to Mr. Nicholson who was the new treasurer.

Q And I notice that the second item here is an original executed agreement between Edward T. Canfield and Metropolitan Steamship Company. Did that relate to the sale of the wharf properties in Boston, which you have referred to, which you said was consummated after you got out? A I presume so; yes, sir.

Q This also covered a duplicate original of the agreement which is in evidence as C. 6, and the original release executed by yourself in respect to the India Wharf, and a duplicate deposit slip covering a deposit in the Chase National Bank, and the minute books of stockholders and directors' meetings and the seal. Is that correct? A Yes.

Re-cross by Mr. Faulks.

Q At the time you made the agreement with Mr. Nicholson, which has been offered in evidence, you also sold some securities, did you not, to Mr. Canfield, the bonds which were held by the Hudson Navigation Company? A Yes.

Q Was there a separate agreement in writing covering that sale? A Yes, I think there was.

Q Isn't it possible and probable that the agreement referred to here as the second item, the following words, "Executed original agreement between Edward T. Canfield and Metropolitan Steamship Company," relate to that agreement and not to the agreement covering the sale of the dock? A No, because I think that agreement would be between Mr. Canfield and the Hudson Navigation Company.

Q You think that was made in the name of the Hudson Navigation Company with Mr. Canfield? A Yes.

Q In this Exhibit C. 5, there is a letter signed by you, as president of the Metropolitan Steamship Company of New Jersey, to the trustee under the mortgage; that is, the American Trust Company, dated February 18, 1910, and in that letter you say as follows: "The result of the operation of these freight vessels shows a heavy monthly loss, and under present conditions there does not seem any material prospect of change for the better." Was that true at that time? A Yes.

Q In the resolution of the board of directors, forming part of the same exhibit, it is also stated that, "Whereas, the said freight vessels have been operated at a loss, and in the judgment of

this board their continued operation will involve a constant loss''; is it the fact that that was the judgment of the board at that time? A Yes.

Q And that judgment was founded on the experience the company had had in the operation of the freight boats and also upon the experience that the Maine Company No. 1 had had?

Mr. English. I object to that; I do not know how he can talk about the experience of the Maine Company No. 1, if he wasn't connected with it.

Q You examined the records and books, or caused an examination to be made, of the records and books of the Maine company before you purchased this property at the receivers' sale, didn't you? A Yes.

Q You knew that it had been losing money constantly before then, did you not? A Yes.

Q And I now ask you if it is not the fact that the judgment of the board of directors in this resolution, to the effect that continued operation of the freight boats would involve a constant loss, was not based upon your knowledge of the experience had with those boats by the New Jersey company and by the Maine company? A I didn't go into the Maine company prior to the receivership, but during the entire period of the receivership; in other words, there was strong competition by competing lines from New York to Boston, and they were unable to make any money in the freight business.

Q And it was that knowledge which resulted in this judgment upon the part of the directors that the operation of the freight boats could not be carried on except at a constant loss? A Yes.

Re-direct by Mr. English.

Q Who was your competitor in the freight business? A The Merchants Line, I believe.

Q Who owned it, do you know? A New York, New Haven & Hartford.

Q Railroad? A Yes.

Q Owned the Merchants Line? A Yes.

Q And they were competitors which you had to fight against in operating, both during the receivership and after the defendant company was formed? A Yes.

Q And in your negotiations with Mr. Robbins which resulted in the resolution to sell to Russell was there any discussion as to the competition which you had had to fight with the New Haven line?

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

A Undoubtedly there was discussion, but I don't remember the details of it.

Q Did he suggest that this competition would certainly grow no less, but would be greater, if you continued to operate those freight boats, as an inducement to you to acquiesce in his suggestion that you sell it?

Mr. Faulks. Same objection.

A I don't remember any such suggestion.

Q Did those freight boats operate all winter as well as all summer? A Yes.

Q What was the business done in the winter as compared with the summer? A There was a large volume of freight in summer.

Q It was operated much more profitably? A Yes.

Q The defendant company had been organized in November, preceding, had it not? A Yes.

Q So that when the directors passed their resolution in March, their sole experience as directors of that company was based on the winter season, which was the difficult time of the year to operate successfully; is that not true? A Yes.

Re-cross by Mr. Faulks.

Q There was also plenty of freight competition between Boston and New York by all water routes in the freight business at that time, was there not, besides the Merchants Line? A Yes, there was; sure.

Q Many other competitors, at least, a number of others? A There were others; I don't know how many.

Re-direct by Mr. English.

Q As a matter of fact, the New Haven Railroad controlled most of it, did it not?

Mr. Faulks. If he knows.

Q Do you know, as a matter of fact, whether the New Haven Railroad controlled most of it? A I do not think I am competent to answer that.

Q I notice in this letter which was addressed to the American Trust Company, trustee, and which is part of Exhibit C. 5, that you said, "Another reason for the prompt disposal of these vessels is the fact that, whilst we have a pier to accommodate the passenger vessels, we have not yet been able to secure proper pier quarters for the freight vessels, and we will be obliged to vacate within the next week Pier 58,

which we are now occupying temporarily." Who owned Pier 58? A I think that is one of the Atlantic liners; I think the Cunard had that, before moving up to their Chelsea pier.

Q You made some temporary arrangement about it? A Yes.

Q That was a pier in New York? A Yes, North River.

Q Don't you know that it is a fact that the Metropolitan company, the predecessor company, had operated a freight line to Boston quite successfully for a large number of years, some twenty-five years, before the time we have been speaking of in this case?

Mr. Faulks. Objected to as immaterial and irrelevant.

Q Yes, I understand so.

Q Did it at that time own freight piers? A It was leased.

Q Do you know what those piers were, their numbers, and where they were? East River piers or North River piers? A I remember years ago the old Metropolitan, before I had anything to do with it, were occupying Piers 8, 9 and 10, North River.

Q Do you know who controls those piers at the present time? A I do not.

Q Do you you know who controlled them at the time you wrote this letter, February 18, 1910?

Mr. Faulks. Objected to as immaterial.

A I presume I did at the time; I don't remember now.

Q Were they not controlled by the New Haven Railroad?

Mr. Faulks. Same objection.

A I think they were, yes, sir.

Q And that was the reason, or one of the reasons, why your company found it difficult to get pier quarters for their freight vessels? A It is always a hard proposition to arrange for piers on the North River by leases.

Q Is that one of the things that added to the hardness of the problem? A Securing piers.

Q The fact that the New Haven controlled those piers? A The fact that every pier was under lease and under use made it hard for us to secure one.

Q Is it not a fact that the New Haven through its allied steamship company controlled most of the piers on the North River, speaking of February, 1910?

Mr. Faulks. I object to that upon the ground that it is not shown that the witness knows.

Q Who were allied companies of the New Haven Company at that time? A I don't think I am competent to answer the question.

Re-cross by Mr. Faulks.

Q What is the source of your knowledge that the freight business carried on by the Maine Company No. 1 for twenty-five years or so before it went into the hands of the receiver was profitable, and if in making that statement with reference to that period you intended to include the Massachusetts company which was succeeded by the Maine Company No. 1, I would like to have your answer cover that company as well as the Maine Company No. 1? A What I referred to was the operation of this line by

Mr. Whitney; talking with me, he has advised me that the business was very profitable.

Q What period did his operation of this line cover? A I should say perhaps fifteen or twenty years prior to 1905.

Q And he simply told you that it was very profitable; is that all? A I had figures.

Q Figures given you by him? A Yes, he gave me some figures and I had the general record of the company looked up.

Q That period antedated the time when the Yale and Harvard were constructed, did it not? A Yes.

Q Do you know what boats the company had in service at that time? A I believe they had the four boats that we have mentioned here today several times.

Mr. English. Freight boats?

Witness. Yes.

Q Do you know what the conditions were with regard to competition at that time as compared with what they were after 1905? A No.

JOHN W. McKINNON, sworn for complainant.

Direct examination by Mr. English.

Mr. Faulks. I object to the examination of this witness upon the ground that he has been previously examined in this cause, under an earlier notice, and having been concluded at that time without any reservation or right to recall him, or even notice that it would be done. It appears by the evidence that he was examined and cross-examined, and we do not think that the statute authorizes the giving of more than

one notice for the examination of any one particular witness, where his testimony is actually taken and closed under the first of such notices.

Mr. Ward. Same objection.

Q Since you testified in this case before, we have taken the testimony of the officers of the American Trust Company in Boston, and there has been introduced in evidence as Exhibit C. 94, a memorandum giving the amount and the bond numbers, showing the bonds which were turned in at the time of the transfer of the dock properties and the freight boats. I show you this Exhibit C. 94 and call your attention to bonds numbers 2485 to 2906, aggregating $422,000, and also to the fact that this exhibit shows that these bonds were originally delivered to Ladenburg, Thalmann & Co., of New York, and from a foot note which appears on the exhibit, were exchanged for permanent bonds originally delivered to John W. McKinnon, and I ask you whether these bonds which I have mentioned are a part of the bonds which were turned over by you, or the Assets Realization Company, to Mr. Douglas Nicholson, the purchaser of those securities, at the time of the sale, namely, March 5, 1910?

Mr. Faulks. Objected to as immaterial and irrelevant.

Mr. Ward. Same objection.

A I have no record of the serial numbers of the bonds which I turned over.

Q What do you remember about it? A I remember that we had—our records show that we had a loan with Ladenburg, Thalmann & Co.—I mean the syndicate had a loan with

Ladenburg, Thalmann & Co., and they were holding some $526,000 of bonds.

Q And had that loan been paid off at the time of the transfer of the securities to Mr. Nicholson on March 5, 1910? A It was paid off from the proceeds of that sale.

Q As a part of that transaction? A Yes.

Q Do you remember whether those bonds which went to secure that loan were turned over to Mr. Nicholson in the general transaction?

Mr. Faulks. Same objection.

A Yes, the bonds which were pledged with Ladenburg, Thalmann & Co. were turned over.

Q Turned over to whom? A To Nicholson as part of the sale.

Q What was the total of the bonds which you say were pledged, as you remember it? A Something over $500,000.

Q I see on this same exhibit C. 94 a record of $118,000 bonds, numbered 1707 to 1802, and numbers 1807 to 1828, which the Exhibit C. 94 shows were originally delivered to you; were they included in the pledge to Ladenburg, Thalmann & Co?

Mr. Faulks. Same objection.

A I have no record of the serial numbers. I know that there was a block of $104,000 of bonds which we acquired from Hornblower & Weeks and which were held by Ladenburg, Thalmann & Co., in addition to something over $400,000.

Q A moment ago you said there were $526,000 pledged? A Yes.

Q If you take your $104,000 which you mention, and the $422,000, also mentioned, you get

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your $526,000? A That will probably be the amount.

Q So you would say now, looking at Exhibit C. 94, that the bonds pledged with Ladenburg, Thalmann & Co., aggregating $526,000, were the $104,000 represented by numbers 324 to 427, and according to Exhibit C. 94, originally delivered to H. T. Graff, 25 Broad street, New York, and the $422,000, previously mentioned, delivered to Ladenburg, Thalmann & Co., is that right?

Mr. Faulks. Objected to on the ground that the question is grossly leading and constitutes testifying on the part of the counsel engaged in putting the question, and not on the part of the witness at all. Witness has said he cannot remember any serial numbers, and I submit that the question is clearly improper.

Q Look at Exhibit C. 94 and tell me if you can indicate from the bonds enumerated thereon these bonds which made up the $526,000 which you say were pledged with Ladenburg, Thalmann & Co?

Mr. Faulks. Witness has already said he cannot remember any serial numbers of the bonds.

A I have no record of the serial numbers, as I have stated before. I should guess that 104 bonds—

Mr. Faulks. We object to any guess, Mr. McKinnon.

Q Is that judgment or guess? A That is my judgment.

Q Give your judgment. A —and the $422,000 delivered to Ladenburg, Thalmann & Co.

Q When you say the 104 bonds, what do you mean? A I mean the 104 appearing on this exhibit.

Q Speaking of bond numbers or dollars? A $104,000 par face value of the bonds.

Q According to Exhibit C. 94, delivered to whom originally? A H. T. Graff.

Q And of this aggregate of $526,000, what part was delivered to Mr. Nicholson on the transfer of the securities?

Mr. Faulks. I object to that on the ground that the witness has not yet identified any particular bonds as being either deposited with Ladenburg, Thalmann & Co. or as having been delivered to Mr. Nicholson, and on the further ground that it is immaterial and irrelevant.

Mr. Ward. Same objection.

A They were all delivered to Mr. Nicholson.

Q This Exhibit C. 94 shows that bonds to the amount of $118,000 were originally delivered to you; do you remember that fact? A I know that bonds were delivered to me.

Q Do you know whether or not those bonds which were originally delivered to you were turned over to Mr. Nicholson on this transfer?

Mr. Faulks. Same objection.

A The bonds which were delivered to me were turned over to Mr. Nicholson.

Q It appears from Exhibit C. 94 that $50,000 of bonds were delivered to J. W. McKinnon, shareholders' agent of the National Bank of North America; you are the J. W. McKinnon there mentioned? A Yes.

Q Do you know whether those bonds were turned over to Mr. Nicholson on that transaction?

Mr. Faulks. Same objection.

Mr. Ward. I object to this entire line of testimony on the same ground.

A They were.

Q Exhibit C. 94 shows that $193,000 of bonds were originally delivered to the Hudson Navigation Company, Troy, New York; you were the president of that company, I think, at that time? A When?

Q March 5, 1910? A Yes, about that time.

Q Can you say whether those bonds of the Hudson Navigation Company were turned over to Mr. Nicholson on this transfer?

Mr. Faulks. Same objection.

A The Hudson Navigation Company turned over a large block of bonds; I had no serial numbers.

Q But you remember approximately what they aggregated? A $347,000 face par value.

Q That was the total of the bonds they had? A No, one-half of what they had; that was the amount which they turned over.

Cross examination by Mr. Faulks.

Q Mr. McKinnon, are you appearing here in response to a subpoena? A Yes, sir.

Q Have you it with you? A Yes.

Q May I see it? A Yes, (producing subpoena *duces tecum*).

Q I observe that the subpoena *duces tecum* which you have handed me just now, calls for the production by you at this time and place of all books and records in your possession showing the serial number of the bonds issued by the Metropolitan Steamship Company of New Jersey, held or owned in 1910, by you

or by the corporations of which you were an officer or an agent, and by the firms or partnerships of which you were a member; have you produced such records? A No.

Q Are there any now in your possession? A No.

Q Are you still connected with the Hudson Navigation Company? A No.

Q You said that the Hudson Navigation Company in March, 1910, sold to Mr. Nicholson about one-half of the bonds which it then had; at least, I so understood you; did I understand you correctly? A Yes.

Q The total of their holdings of bonds of the Metropolitan Steamship Company at that time was $334,000 or thereabouts? A The total of their holdings, as I remember, was $693,000, par value.

Q And they sold, roughly, half of them? A Yes.

Q When did you cease to be connected with the Hudson Navigation Company? A About a year ago.

Q Prior to that had they disposed of the remainder of those bonds of the Metropolitan Steamship Company which they held in March, 1910? A No, they had disposed of part of them.

Q About how much? A That I do not remember.

Q Who appeared for the purchaser in the negotiations leading up to the sale of the remainder of the bonds? A We sold a very few of the bonds. To be more accurate, I believe we traded bonds in exchange for work done.

Q Traded them to whom? A I think we traded some to Mr. Englis for part of the work

on account of the work on the steamer Berkshire.

Q What did the Hudson Navigation Company do with the remainder of those bonds? A When I resigned, they were still in the treasury.

Q At the time of your resignation, did the control of that company pass into other hands? A Yes.

Q Into whose hands? A We sold our interest to Hayden, Stone & Co.

Q Do you know by whom that interest is now held? A I understand by Mr. Morse.

Q Mr. C. W. Morse? A Yes.

Q The same Morse who was here when you testified in this case on the prior occasion? A I do not remember his being here.

Q It was the same C. W. Morse who at one time controlled the Metropolitan Steamship Company organized under the law of Maine? A Yes.

Q And has he now acquired control of the Hudson Navigation Company? A I believe he has.

Q At the time the interest which you represented parted with their holdings in the Hudson Navigation Company, did they receive payment therefor in cash? A Yes.

Q From whom? A Hayden, Stone & Co.

Q Do you know whether or not Mr. Morse is indebted at this time to those interests—I mean the interests you particularly represented in the Hudson Navigation Company, in any amount?

Mr. English. Objected to as not cross examination and also as irrelevant and immaterial.

Q The interests that you represented at the time you were an officer of the Hudson Naviga-

tion Company; do you know whether he is indebted to the Assets Realization Company, for instance? A Yes, I know that he is not; if so, it is a nominal amount.

Q What interest did you represent at the time that you were an officer of the Hudson Navigation Company?

Mr. English. Objected to as not cross examination, and immaterial.

A The number of shares?

Q If it was your personal holding, Mr. McKinnon, I don't intend to inquire about it; I assume you were acting for someone else in holding the securities of the company. A I was acting for the syndicate.

Q A syndicate composed of interests affiliated with the Assets Realization Company? A Yes.

Q And it was that syndicate that sold those securities to Hayden, Stone & Co.? A Yes.

Q Paid in full for everything that it parted with at that time? A Yes.

Q Is Mr. C. W. Morse indebted to that syndicate in any amount at this time? A No, not at all.

Q Was he at the time of the inception of this suit? A No.

Re-direct by Mr. English.

Q Are you correct in saying that Mr. Morse controls the Hudson Navigation Company; isn't it Hayden, Stone & Co.'s interests? A I do not know.

Q All you know is that he is now an officer of that company? A I so understand.

Q But whether he has any financial interest in it, you don't know? A No.

Q As a matter of fact, Hayden, Stone & Co. have a financial interest and put Mr. Morse in? A I do not know.

CAMPBELL CARRINGTON, being duly sworn according to law, on his oath says:

Direct examination by Mr. English.

Q Where do you live, Mr. Carrington? A 100 Riverside Drive, New York City.

Q Do you live in the State of New Jersey? A No, I do not.

Q What is your business, Mr. Carrington? A I am one of the vice-presidents of the Assets Realization Company.

Q The same concern with which Mr. McKinnon is connected? A Yes.

Q Were you in any way connected with the reorganization of the Metropolitan Steamship Company, the Maine Company No. 1, prior to the formation of the New Jersey Company? A I was at that time one of the vice-presidents of the Assets Realization Company and I had not a great deal to do with it; Mr. McKinnon was particularly active in that.

Q The reorganization was really accomplished through the Assets Realization Company, was it not? A They were more or less instrumental in it; the reorganization was effected through a reorganization committee composed of Mr. McKinnon and Mr. Hornblower, I think, and Mr. Shaw.

Q Mr. McKinnon being on that committee naturally brought the Assets Realization Company in, I suppose? A Yes.

Q After the reorganization of the defendant company, the New Jersey company, you became an officer of it, I think? A Yes, secretary and treasurer, I believe.

Q Do you remember when you became secretary and treasurer and how long you held that office? A I cannot remember the dates, I think shortly after the reorganization of the company, and I held the office up to the time of my resignation, which was, I think. on the date of the consummation of this transaction, in which we sold our interest in the company—in the securities.

Q Were you present at any of the negotiations which preceded the sale of securities of this company? A I was not present at any meetings up to the time that some tentative agreement had been arrived at, but I was at several meetings when the method of putting the transaction through was discussed.

Q Going back again—did you have anything to do with the negotiations which were participated in by Mr. McGovern and Captain Goodall and Mr. McKinnon? A No, I did not.

Q You got in the matter after the Goodall negotiations fell through? A That is correct.

Q Then you must have gotten into the matter in the early part of the winter of 1910? A I think that is right.

Q February, I think Mr. McKinnon said? A Yes.

Q In those negotiations in which you participated, did you meet Mr. Edwin D. Robbins? A I did.

Q Who else did you meet? A I met a man who was sent there by Mr. Robbins, I forget his name.

Q Mr. Chase? A Mr. Chase—I was going to say Mr. White.

Q Did you meet Mr. Douglas Nicholson? A Yes, I met Mr. Douglas Nicholson, I think the first time was the day that the transaction was consummated.

Q Did you meet Mr. Chase after that day? A Yes, several times.

Q Did you meet a Mr. Canfield before the consummation of the matter? A I don't remember ever seeing Mr. Canfield.

Q Turn back in your mind to the first conference that you participated in, in which Mr. Robbins was present; can you state who else was present and when it was and where it was? A To the best of my recollection, it was in the office of the Assets company, 25 Broad street, and there were present Mr. Robbins, Mr. McKinnon and myself and Mr. Shaw, who lives in Philadelphia, afterwards joined us.

Q On that same day? A On that same day.

Q And that was the opening meeting that you participated in? A It was the opening meeting, as far as I am concerned.

Q Do you know whether there had been previous negotiations between Mr. McKinnon and Mr. Robbins? A Yes, I know there had been.

Q At this meeting that you refer to, when you personally were present with the gentlemen you named, what took place with reference to the sale of this property?

Mr. Faulks. We object to the evidence sought to be brought out by this question, upon the following grounds: first, that it is

irrelevant, immaterial and incompetent; second, that it would not be binding upon any of the defendants whom we represent, and upon the further ground that the negotiations which preceded the making of the contract for the sale of the securities were merged in that contract. Any evidence which led up to the making of the contract is not competent.

A To the best of my recollection the method of consummating the transaction was there discussed.

Mr. Faulks. We move to strike that out upon the ground that it is a statement of the conclusion on the part of the witness, and not a statement of fact.

Q And the transaction as I understand it, involved the sale of the securities of the defendant New Jersey company held or controlled by the Assets Realization Company or the committee? A That is correct.

Q What was the method of putting through that arrangement which was there discussed?

Mr. Faulks. The same objection as I made to a question a moment or two ago.

A Mr. Robbins brought down a series of contracts which were stated to have been prepared by Mr. Chase, and I went over those contracts with Mr. McKinnon, and afterwards, as I said before, Mr. Shaw, according to my recollection, entered into the negotiations, when he came over from Philadelphia, and after going over those contracts, I was convinced that the form of the contract and method of consummation as set forth in the contract was altogether wrong, and our negotiations or our

discussion was as to the method that should be pursued in consummating the transaction.

Q Were those contracts or form of contracts ever signed? A No, not those forms submitted that day; they were all changed.

Q Do you know where they are now? A No, I don't know.

Q Mr. Robbins took them back with him?

Mr. Faulks. If you know.

A I don't know.

Q At any rate, they were not left with you? A No.

Q Or Mr. McKinnon? A I think not.

Q Was there a subsequent meeting between you and Mr. McKinnon and Mr. Robbins and the other gentleman? A Yes.

Q Do you know when and where that was? A We had a later meeting; as a matter of fact, we had two or three later meetings after that, and it was a question of going over the contracts and making the changes and alterations, changing some of the things.

Q This first meeting in which you participated, when these forms of contracts were produced, were the objections to the plan as set forth in those contracts made by you or someone else?

Mr. Faulks. Same objection.

A Objection was made by me principally; they were contracts submitted by Mr. Robbins and I thought they were altogether wrong.

Q Are you a lawyer as well as a business man? A Yes. I am not in active practice now, but I was for ten years in Baltimore.

Q The result of those negotiations finally was the agreement which is in evidence as Ex-

hibit C. 6 between the Assets Realization Company and Douglas Nicholson, is that correct? A That is correct. Of course, there were other papers that covered the transaction, too. My recollection is that covers part of the transaction, that covers the sale of the securities.

Mr. Faulks. We now move to strike out whatever the witness has said with regard to the negotiations preceding the making of the contract, as it appears from his evidence that the result of those negotiations was embodied in Exhibit C. 6 or some other contracts that were signed after the negotiations were concluded.

Q What other papers were there in addition to this Exhibit C. 6, Mr. Carrington? A There were some other papers in connection with the sale of some of the bonds of the Hudson Navigation Company and also with respect to the freight boats.

Q I show you a paper purporting to be executed by the Hudson Navigation Company, by John W. McKinnon as president, with the corporate seal annexed, attested by Campbell Carrington as secretary, bearing date March 4, 1910, which is the same date as Exhibit C. 6, and ask you if that is the paper which you referred to just now as one of the other papers in addition to C. 6 which was involved in this transaction? A Yes.

Q And that paper is executed by Mr. McKinnon and yourself as officers of the Hudson Navigation Company? A Yes.

Q And that is the seal of this corporation? A Yes, sir.

Mr. English. I offer in evidence paper dated March 4, 1910.

Mr. Faulks. We object to the reception of this paper in evidence upon the ground that it and its contents are irrelevant, immaterial and incompetent.

Mr. Lovell. I have no objection.

(Marked Exhibit C. 8.)

Q I also show you receipt purporting to be signed Hudson Navigation Company, J. W. McKinnon, president, dated March 5, 1910, reciting the receipt from Edward T. Canfield of the full purchase price of 347 first mortgage five per cent. gold bonds of the Metropolitan Steamship Company, the purchase price being stated at $280,684.45; is that another one of the papers that you referred to as part and parcel of this transaction? A Yes, that was a receipt given on the consummation of the sale of the bonds, dated March 5.

Mr. English. I offer that paper in evidence.

Mr. Faulks. I made the same objection to this receipt as I did to Exhibit C. 8.

Mr. Lovell. I have no objection.

(Receipt dated March 5, 1910, marked Exhibit C. 9.)

Q Was Edward T. Canfield, referred to in this receipt, Exhibit C. 9, present on the closing out of the negotiations, do you remember? A I don't remember.

Q Do you remember the place where the negotiations were closed? A Yes, I remember that.

Q Where was it? A The place appointed for the closing of the transaction was at the office of the Assets Realization Company; we

met there in the board room and arranged papers and the signatures and then we went over to the Chase National Bank where delivery was made of the consideration, and the securities.

Q Do you remember whether that was after banking hours? A That, to the best of my recollection, was on Saturday.

Q In the afternoon? A In the afternoon that we met, and my recollection is that we had to telephone to the bank and ask them to keep open for a little while so we could consummate the thing, and it was consummated at the Chase National Bank after twelve o'clock.

Q On Saturday? A On Saturday.

Q Were you present when the consideration which is named in Exhibit C. 6 was passed over? A Yes, sir.

Q And that was in the form of what? A I don't remember whether in the form of checks or drafts—I mean whether they were cashier's checks or certified checks or just what, but it was something that was pretty close to—equivalent to cash.

Q You eventually got the money? A Yes.

Q I notice in the receipt, Exhibit C. 9, that it acknowledges receipt of the full purchase price for 347 bonds and states that 346 of said bonds have been delivered to Mr. Canfield, and contains a promise to deliver one bond on or before March 8, 1910, by mailing it to the Second National Bank of New Haven, Connecticut, for the said Canfield; do you remember whether that was done? A No, I don't; I do not remember.

Q Do you know where Mr. Canfield came from, where his home was or place of business? A I have no idea.

Q Do you know whether he came from New Haven? A I don't know anything about it.

Q Have you any business relations, or ever had, with the Second National Bank of New Haven? A No—when I say I never had any business with it—I may have afterwards sent that bond to it, but outside of that I never had any previous dealings with it.

Q Have you had any since, other than the transaction involving that bond? A No, and I have no recollection about that.

Q Please tell us who was present in the office of the Chase National Bank on the consummation of this transaction, as near as you can remember. A Mr. McKinnon and Mr. Robbins, and my recollection is, Mr. Chase and Mr. Nicholson were there, I am not sure about that. Then we had some of our office force there in addition, I don't remember who they were.

Q Do you say that the papers, such as, for example, Exhibit C. 6 and the other papers, were signed in your office 25 Broad street and then taken or sent to the Chase National Bank to be exchanged for the consideration, etc? A My recollection is that we had the papers all executed in the board room of the Assets Realization Company and we made our deliveries all at the Chase National Bank.

Q Were the papers signed by both parties in the board room of the Assets Realization Company? A Yes, I think so.

Q Was Mr. Robbins present at the time of the signing? A Yes.

Q Were the physical securities kept in the Chase National Bank, or where were they kept? A I don't remember that.

Q What was the reason for going to the Chase National Bank, do you know? A I don't remember why we went to the Chase National Bank.

Q Do you remember at whose suggestion? A No, I do not. I assume it was at our suggestion, because we did business with the Chase National Bank, the Assets Realization Company.

Q Did you keep a lock box over there? A No, we did not.

Q Was Mr. Robbins in the room at the Chase National Bank when the consideration was paid over on the one hand and the securities delivered on the other? A Yes.

Q Present at that time, or did he go out and come back afterwards, or don't you remember? A I don't remember; it took some little time to count the securities and all that. When the actual deliveries were made, I know that I was in a little office in the Chase National Bank, which was the president's office, and Mr. Robbins was in and out of the general banking room; I cannot say whether he was or not when the actual delivery was made.

Q Did Mr. Robbins take any part in the counting over of the securities? A Yes.

Q He was interested in them? A He took part in it.

Q Whether interested or not, he took part in it? A He took part in it; I assumed it was due to interest.

Q You say Mr. Chase appeared there as counsel for Mr. Nicholson, the purchaser? A I think Mr. Chase was there.

Q Did he pay any attention to the counting of those securities? A I wouldn't say that; I

wouldn't say whether he did or not; I am not sure about that.

Q Did Mr. Nicholson pay any attention to the counting of the securities? A I don't remember that.

Q You do remember that Mr. Robbins did? A I do remember Mr. Robbins.

Q And who else, yourself? A Yes.

Q Anybody else that you remember? A Yes, some of the office force and Mr. McKinnon.

Q So, apparently, you on the one hand and Mr. Robbins on the other superintended the counting and checking up of those securities?

Mr. Faulks. I object to that as calling for a conclusion on the part of the witness; he has told all about what happened; it is not fair to have him attempt to characterize it.

A Mr. Robbins was there and he took an active part in it.

Q And you did? A I did.

Q And the clerks did the manual work, so to speak? A Yes.

Q When was the first time that you met Mr. Nicholson in this transaction? A I do not think I ever saw Mr. Nicholson until that day.

Q Had you ever heard of him in connection with the matter up to that day? A He was mentioned in the contracts.

Q Prior to his name being incorporated in the contract had you ever heard of him in connection with it? A No, never had.

Q Who did Mr. Robbins name as purchaser in the negotiations which preceded the execution of the contract Exhibit C. 6? A I don't remember that.

Q Did he name any purchaser? A I don't remember.

Q Do you know whether he said he had a purchaser or would provide one? A I cannot say just what he said about that, but he had that discussion with Mr. McKinnon.

Q Were you present? A No, I wasn't present up to the time that the contracts were, as I say, submitted by Mr. Robbins, prepared, as I said, by Mr. Chase.

Q Was anything said by Mr. Robbins or any of his associates in your presence as to whether or not Mr. Nicholson was a bona fide purchaser or purchasing as the representative of other interests? A I don't remember that being discussed before me.

Q Going back a moment to the original plan of reorganization of this company and referring particularly to Exhibit C. 1, it appeared from Mr. McKinnon's testimony at the last hearing that there had been some modification of that plan. Have you been able to find a draft of the modification? A Yes, in response to your request, I found among our files a copy of a letter sent by Mr. McKinnon to the creditors' committee.

Q And that letter is dated September 24, 1909? A Yes.

Q Is that a true copy of the letter? A I think so.

Q I notice that the copy is not signed, but has a blank for the reorganization managers of the Metropolitan Steamship Company; do you know who signed that for the managers? A I think Mr. McKinnon.

Q In connection with that letter, which seems to have been addressed to Philip Stockton and

others named as a committee of creditors of the Metropolitan Steamship Company, I show you a letter dated September 30, addressed to the reorganization managers and purporting to be signed Philip Stockton and Henry D. Adams for the committee of creditors, was that received in reply to the letter of September 24, 1909? A Yes.

Q And the original plan and agreement, C. 1, was amended in accordance with those two letters?

Mr. Faulks. We submit that the letters speak for themselves.

Mr. English. I won't press the question.

Q Were the amendments as suggested in those two letters carried out in connection with the reorganization? A Yes.

Mr. English. I offer in evidence the two letters referred to by the witness; namely, one of September 24, 1909, and the reply of September 30, 1909.

(Letter dated September 24, 1909, marked Exhibit C. 10.)

(Letter dated September 30, 1909 marked Exhibit C. 11.)

Q Following the closing out of the matter at the Chase National Bank in accordance with the provisions of Exhibit C. 6, what next happened on that same day, do you know? A Yes, we went back to the Assets Realization Company's office and there was a change in the officers of the company and I delivered to the new treasurer of the company—

Q You are speaking now of the New Jersey company? A Yes; I delivered to him certain

documents of the Metropolitan Company of New Jersey and got his receipt for them.

Q I show you the receipt already in evidence as Exhibit C. 7; is that the receipt which you got? A Yes, that is.

Q Besides giving up those papers called for in that receipt, what else took place on that occasion? Mr. McKinnon said a directors' meeting was held? A There might have been meetings there, I don't remember that.

Q At any rate, following the closing at the Chase National Bank did you and the other officers resign? A Yes.

Q Were you present at any meeting when others were elected in your place? A No, not the officers.

Q What kind of a meeting were you present at when any change was made? A When we met we resigned and got out as directors and new directors were put in and then we left.

Q Were you present when the new directors were elected? A Yes.

Q Do you remember who they were? A No, I do not.

Mr. Faulks. That was on the day that the securities were delivered, was it not?

Witness. Yes, but later in the day, after we consummated the matter at the Chase National Bank, we went back to the Assets Realization Company, and there was a directors' meeting, and these changes were made in the directors and then Mr. Nicholson —I don't think I was there when he was elected treasurer, but I delivered over this stuff to him—these papers called for in the receipt.

Q And subsequently got the receipt? A Yes, I subsequently got the receipt.

Q Let me call your attention to the receipt, C. 7, and tell me, please. what item No. 5 is which is said to be a duplicate deposit slip, Chase National Bank, covering deposit of $266,-
10 387.13? A I don't remember what that was; I will have to look into that; evidently, what it purports to be, deposit slip showing deposit in the Chase National Bank.

Q To the credit of the defendant company? A I think it is to the credit of the Metropolitan Steamship Company of New Jersey.

Q Do you know where the money came from that went into the deposit?

Mr. Faulks. If you know.

20 A I think I do, but I wouldn't like to testify about it; I can refresh my recollection on that from our records, but I don't want to speculate about it.

Q I ask you if you have any knowlege of any sale or transfer of the freight boats and Boston dock properties to Messrs. Wing & Russell? A Yes.

Q When did that take place with reference
30 to the sale of the securities in accordance with Exhibit C. 6? A I would have to refer to the minutes of the corporation; it was just before that. I think, or about the same time.

Q Mr. McKinnon said it was a couple of weeks before; have you any recollection to the contrary? A No, I have not; my recollection is as it was before.

Q Did you participate in any negotiations which preceded the closing out of that matter;
40 namely. the sale of the freight boats and the

Boston wharf property? A No, except I remember going over to Wing & Russell's office.

Mr. Faulks. Won't you just answer the question. I wanted an opportunity to object before you went on and said what you did.

A (Continuing.) My recollection is I did.

Q To what extent did you participate in those negotiations?

Mr. Faulks. I object to that as irrelevant, immaterial and incompetent and upon the further ground that the negotiations resulted in agreements or papers which have already been offered in evidence and which must speak for themselves.

A My recollection is that when the papers I have heretofore referred to as being submitted by Mr. Robbins, at that time, as I say, was the first time I met Mr. Robbins in connection with the matter—that the freight boats entered into the discussion that day.

Q So the original proposition which you objected to the form of, involved the transfer of both physical property and securities, is that right?

Mr. Faulks. We object to that question on the ground that it is irrelevant, immaterial and incompetent, and also improper in form, as it calls for a statement of a conclusion on the part of the witness.

A No, I didn't say that; I didn't mean to say that I recalled that being the case; I do not know just what those papers covered, except the general transaction. I wouldn't say part of them covered the freight boats or part of them didn't, but I do know that the question of the

freight boats entered into the discussion that day.

Q Did you have any other connection with the freight boat transaction? I think you said you went to the office of Wing & Russell?

Mr. Faulks. Same objection.

A Yes. I went over to see Wing & Russell, that was on the consummation of the transaction, or leading up to the consummation of the transaction as shown in the minute book of the company—the sale to the company.

Q What transaction do you refer to, the freight boat or security transaction? A The sale of the freight boats; I went over some papers with them in connection with it, and the transfers, custom house papers and all that.

Q Wing & Russell are lawyers in this city? A Yes, they at that time were — I went to their office over in the National Bank of North America Building or the other building on Wall street.

Q Who on behalf of Wing & Russell did you have your business with?

Mr. Faulks. Same objection, and upon the further ground that anything that might be said in answer to this question by the witness would not be binding upon the defendants or any of them.

A The purchaser of the boats.

Q What individual in the firm? A I think my recollection is Mr. Wing.

Q And he appeared as the purchaser of the boats?

Mr. Faulks. Same objection.

A I think it was the firm that did.

Q Do you remember whether the papers for the transfer recited that this property was transferred to the individuals, naming them, who are the partners in the firm of Wing & Russell, or Mr. Wing personally?

Mr. Faulks. We object to that on the ground that the papers themselves are the best evidence of their contents, and not the witness's indefinite recollection in regard to it.

A I don't remember that; I haven't done anything to refresh my recollection on that at all.

Q Have you any of those papers in your possession, or the Assets Realization Company? A What we have and what we haven't, I don't know until we look for them; I may have.

Q At any rate, you conducted the negotiations with Mr. Wing on behalf of Wing & Russell? A I cannot say that I conducted negotiations; I discussed methods of consummating the transaction which was all agreed upon.

Q With Mr. Wing? A I never discussed it with Mr. Wing before that; it was all agreed to by somebody.

Q When you got into the thing it was all ready for consummation? A As far as Mr. Wing was concerned, yes.

Q What about as far as your side was concerned? A It was all ready for consummation, but I say I didn't see Mr. Wing until some days after we had our first meeting with Mr. Robbins which I referred to.

Q Did you participate in the negotiations which led up to the arrangement for the transfer of the freight boats? A I did the day

that I referred to, when the matter was brought up.

Q You mean with Mr. Wing? A No, with Mr. Robbins.

Q The sale of the freight boats, no matter in what form it was consummated, was part and parcel of the general arrangement for the transfer of the control of this defendant company from your interests to those represented by Mr. Robbins?

Mr. Faulks. We object to that question as improper, upon the following grounds: in the first place, it calls not only for a conclusion on the part of the witness, but asks him to characterize what was done; in the second place, it is clearly a grossly leading question.

Mr. English. Do you object on the ground of the leading character of the question?

Mr. Faulks. I do.

Q Can you say from what you learned at the meeting in which you participated with Mr. Robbins and Mr. McKinnon, whether the sale of the freight boats and the dock property in Boston was or was not part and parcel of the general plan for the transfer of the control of the defendant company?

Mr. Faulks. We object to that upon the ground that it calls for the witness's opinion or conclusion as to what was done, and that is clearly improper. If the matter is one that the witness can go into at all, he should be asked to state what was said and done at that time, and not what those statements or actions constituted in his opinion.

Q What was said and done at that meeting with reference to the sale of the freight boats?

Mr. Faulks. If the witness remembers; we make the same objection, and further, that it is irrelevant and incompetent, and the only proper evidence of the transaction are the papers themselves.

A I wouldn't attempt to quote the conversation verbatim.

Q Give us the purport of it as near as you can.

Mr. Faulks. Same objection.

A I can say this that the question of the sale of the freight boats and sale of the securities were discussed together and as practically one transaction.

Q Discussed by and between what gentlemen?

Mr. Faulks. We move to strike out that answer for the reasons given in the objection just appearing on the record; the witness has not attempted to state what was done or said, or even the purport of what was done or said, but has sought to characterize whatever was done or said.

A That was discussed between Mr. Robbins, Mr. McKinnon and myself, and as I have said, Mr. Shaw afterwards entered into the discussion.

Q You have already said that the form of the papers which Mr. Robbins then produced covered both transactions; is that correct? A I don't remember that, whether they did or not, I cannot say that.

Q Then the next time you had anything to do with the freight boat sale was when you saw

Mr. Wing at his office? A I think that is correct.

Q At the time you had your conversation with Mr. Wing, what transpired?

Mr. Faulks. We object to that as irrelevant, immaterial and incompetent, and on the further ground that anything that may have happened at that time would not be evidential against any of the defendants.

Q Before you answer that, I will ask if at the time you had your conference with Mr. Wing the papers had been signed? A What papers?

Q The papers relating to the transfer or accomplishing the transfer of the freight boats and dock property from your company's control to whoever they went to. A My recollection is that when I took it up to Mr. Wing, that was for the purpose of having the papers executed and arranging for the consummation of the sale, including the deliveries of the custom house papers and things of that kind.

Q At that time had the agreements for the sale and delivery been executed? A I cannot state whether they had or not.

Q Tell us what transpired at your meeting with Mr. Wing.

Mr. Faulks. The same objection will stand, Mr. English?

Mr. English. I am satisfied.

A My recollection is that the agreement for the sale of the boats was signed and then we took up the question of the delivery of the boats by proper transfers.

Q Were the forms of the transfers before you at that meeting? A Yes, I think so.

Q Were they executed at that time? A I don't remember whether they were executed at that meeting; it is a number of years ago; I cannot remember that.

Q They consisted of what general kind of papers? A Transfer according to the maritime customs of papers.

Q Proper papers to transfer title? A Yes.

Q Were you present when the thing was finally closed out, when the transfer was finally made? A Yes, I think I was.

Q Where did that take place? A You are referring simply to the freight boats?

Q I will confine the question to the freight boats. A I think the papers were signed in our office, 25 Broad street, the Assets Realization Company.

Q Who was present on that occasion? A My recollection is Mr. Robbins was present.

Q Anybody else? A I don't remember anybody else, except Mr. McKinnon, and, as I say, our office force.

Q Mr. McKinnon and your office force and Mr. Robbins? A To the best of my recollection.

Q And at that time what papers were exchanged? A I don't remember that.

Q Do you remember how or in what form the consideration was paid for those freight boats? A My recollection is that the consideration was bonds of the company.

Q And did the bonds which were paid cover also the purchase price of the dock properties in Boston? A Yes.

Q Were you present when the transfer of the dock properties was consummated? A I don't remember that.

Q You don't remember whether you were present or not? A No.

Q Mr. McKinnon says it took place in Boston; did you go to Boston for that purpose? A No.

Q Mr. McKinnon testified that the price for this freight equipment and docks was $650,000 in bonds; have you any recollection to the contrary? A No.

Q Do you know what bonds they were, bonds of what company? A The Metropolitan Steamship Company of New Jersey.

Q Do you know in whose possession those bonds had been prior to their being used in this transaction?

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

A I don't remember what composed the different bonds; there were some Hudson Navigation Company bonds and some Assets Realization Company bonds—bonds offered by the Assets company.

Q They were made up of bonds either belonging to the Assets Realization Company or the Hudson Navigation Company? A I believe so.

Q Can you say from your participation in the conference which preceded the signing of Exhibit C. 6, whether or not the sale of the securities had not practically been agreed upon before the sale of the freight boats and dock property was closed?

Mr. Faulks. We object to the question upon the ground that it calls for a conclu-

sion on the part of the witness. It is improper to ask for such a conclusion, and if the inquiry is property at all, it ought to be as to what was done and when it was done. I think it is very unfair that the witness should be repeatedly asked to characterize what was done instead of being asked what was done or what was said. It is unfair to the witness and unfair to us.

Mr. English. I think counsel misunderstands the question; I simply asked the witness whether he can; of course, if he says he cannot say, I will not pursue it further.

A I would rather defer that answer to Mr. McKinnon, who had the active charge of the previous negotiations there. I can perhaps tell you what my conclusions and recollections are.

Q I don't care about your conclusions, but I would like to have your recollection.

Mr. Faulks. I make the same objection.

A I would rather leave that to Mr. McKinnon's testimony; as I said before, I was brought into this transaction when the papers were submitted, that is, brought in to the negotiations.

Q Did you as a director of the defendant company vote for the sale of this freight equipment and dock property? A I don't remember ever being a director.

Q You were secretary and treasurer? A Yes.

Q Were you a stockholder of the company? A I think perhaps I was in a nominal amount; I am not sure that I was.

Q What is your best recollection? A If I was a stockholder it was simply in a nominal amount; I am quite uncertain about that.

Q Did you as an officer of the Metropolitan defendant company execute papers for the transfer of this freight equipment and dock property? A I think I did.

Q Have you a copy of the papers in your possession or in the Assets Realization Company's possession? A I don't think so, I think those papers are among the records of the company; that is where they ought to be.

Q You mean the defendant company? A Yes.

Q Perhaps it will refresh your recollection if I show you Exhibit C. 5, which consisted, among other papers, of a certificate certifying that a certain proposition had been made for the purchase of freight steamers by Wing & Russell, which proposition is set forth, and recites the action of the Board of Directors on that, all of which is certified to by yourself as secretary? A I have looked at this.

Q Having looked at that, does that refresh your recollection as to whether you as an officer of the defendant company had any connection with the transfer of the freight boats? A I have already testified that I had connection with the transfer.

Q Other than as you testified? A And this certificate is a correct abstract from the minutes of the board.

Q That calls to your mind that the board passed a resolution? A Yes.

Q Do you remember now whether you were a director and voted for that resolution? A My recollection is that I was not a director at any time in the Metropolitan Steamship Company.

Q Can you say from that paper whether you recall that you were a stockholder? A I am

very uncertain as to the fact that I ever was a stockholder. I say I may have been in a nominal amount.

Q Can you say from this paper whether you attended the meeting of the board at which the resolution was passed? A I think I did.

Q Do you know at whose request or at whose suggestion the board passed this resolution which you certified to?

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

A I would not like to say.

Q Have you any recollection of any negotiations between Mr. Robbins and Mr. McKinnon when you were present, looking toward the passing of such a resolution as this by the Board of Directors?

Mr. Faulks. I object to that, first, on the ground that the witness has already answered the question in the negative, and in the second place, it is another of the many questions which have been put to him calling for a conclusion; it is not proper that the witness should be asked whether he has a recollection of negotiations looking toward any matter, but simply as to what was said or done at any time that he was present.

A I know the question of the freight boats was discussed—I think I have testified to that before—at the meetings at which I was present with Mr. Robbins.

Q And was not this resolution of the Board of Directors of the defendant company one of the direct results of that discussion and negotiation?

Mr. Faulks. I object to that question as being not only incompetent but as being leading and as calling for a conclusion on the part of the witness.

A It was.

Q Tell us, if you can, at which meeting or meetings such a proposition was discussed.

Mr. Faulks. Same objection.

A To the best of my recollection it was discussed at all of the meetings.

Q At all of those meetings to which you referred, you and Mr. McKinnon were present? A The only ones to which I referred were the ones at which I was present.

Q You were present and who else? A Mr. McKinnon—always Mr. McKinnon, sometimes Mr. Shaw.

Q As representing the other side? A And sometimes Mr. Robert C. Morris.

Q Can you say whether Mr. Robbins was always present? A Well, he was the one—there were numerous meetings when our counsel were present and numerous other meetings at which Mr. Robbins was present, some at which Mr. Morris was not present and some at which he was.

Q Do you know who Mr. Robbins is? A Yes.

Q Who is he? A I know he is a lawyer and I understood at that time he was general counsel of the New Haven.

Q New Haven Railroad? A Yes.

Q Do you know where his offices were at that time? A Just at that time I do not know. I think they were in New Haven; I remember seeing him once in the office of the New Haven Railroad, New York City.

Q At the Grand Central Station? A Yes, the new building there at the Grand Central.

Q Do you remember when that was? A That was after this transaction was consummated.

Q Do you know whether Mr. Robbins to participate in these negotiations came down from New Haven every time?

Mr. Faulks. Objected to as immaterial and irrelevant.

A I don't know.

Q At the time the papers which transferred the title of the freight boats were exchanged between you and Mr. Wing, was the consideration paid? A I cannot recollect just how that took place, the payment of the consideration.

Q You do recollect, however, the consideration was the bonds, as you have already stated? A Yes.

Q And that those bonds were made up of bonds held partly by the Hudson Navigation Company and partly by the Assets Realization Company? A Yes.

Q Have you any knowledge as to whether any bonds held by either of those companies were turned over to the purchasers of the freight boats or of the dock property prior to the closing out of the matter in accordance with Exhibit C. 6, in the rooms of the Chase National Bank?

Mr. Faulks. We object to that on the ground that it is irrelevant, immaterial and incompetent.

A I cannot testify to that without refreshing my recollection from the records, as to what took place.

Q Have you records in the possession of either yourself or the Assets Realization Company which will refresh your recollection on that subject? A I may or may not have, I cannot tell until I look.

Q Did you ever meet Mr. Charles A. Mellen of the New Haven Railroad in connection with this matter? A Yes.

Q Where and when? A I met him once at the offices of the New Haven Railroad at the Grand Central Station.

Q Any other time? A No, I think that was the only time.

Q Who was present on that occasion besides yourself and Mr. Mellen? A Mr. McKinnon and myself.

Q You three gentlemen? A Yes.

Cross examination by Mr. Faulks.

Q When was this occasion that you met Mr. Mellen at the Grand Central depot which you have just spoken of. A That was after the formation of the new Metropolitan Steamship Company.

Mr. English. The New Jersey company?

Witness. Yes, after it had acquired the property which had been purchased by Mr. McKinnon, representing the reorganization committee, and before the negotiations which I have referred to here.

Q You didn't meet him at all in connection with the negotiations which you have just mentioned? A No, that was before the negotiations I referred to.

Q Sometime in the fall of 1909, was it? A I wouldn't say just the time, but it was in between those two periods.

Q You and Mr. McKinnon and Mr. Mellen were the only ones present then? A Yes, to the best of my recollection.

Q Referring to the matter of the bonds that were used in connection with the closing of the transactions for the sale of the freight boats and the wharf property in Boston, do you know, Mr. Carrington, what bonds were used? A I cannot tell you exactly what bonds were used in that connection. I can tell you, as I have testified, that they were bonds either of the Hudson Navigation Company or the Assets Realization Company—held by the syndicate, or both of them; I don't know whether any of the Bank of North America were used, but those were the three sources of supply.

Q What three companies or ownerships do you say constituted the sources of supply? A Assets Realization Company, Hudson Navigation Company and National Bank of North America, I think.

Q You know, do you, that all bonds came from those sources, all the bonds that were used for the payment of those properties? A That is according to my recollection; I do not know that any bonds were gotten from any outside source; I want to say this, that I can find that out and refresh my recollection. I am testifying from my recollection; I do not mean to be absolutely positive about that.

Q Do you know how many of the bonds came from any one of the three sources that you mentioned? A Not that entered into that part of the transaction, no.

Q So that all you mean to say is that it is now your recollection that the bonds used to pay for the freight boats and the Boston wharf

property came from those three sources, but that you are not positive about it? A That is correct.

Q How many times did you meet Mr. Robbins altogether in connection with the transactions that resulted in the contract that was made with Mr. Nicholson? A I do not remember exactly, I should say four or five times.

Q The first time was the day when he submitted some contracts that had been prepared? A Yes.

Q Was any one present at any of those meetings except Mr. Robbins, Mr. Chase and Mr. McKinnon, Mr. Nicholson and yourself? A And Mr. Shaw and Mr. Morris.

Q Mr. Morris acting as your attorney? A Yes.

Q The papers which were there submitted by Mr. Robbins were not those which were finally signed? A That is correct, they were not. I might say, I don't know whether you want this on the record, when I refer to Mr. Morris as attorney for us in this transaction, that was in the consummation. Mr. Marshall, of Underwood, Van Vorst & Hoyt, at that time had represented us up to the time that I referred to, and he was not available at that time, so we had to call in Mr. Morris.

Q Mr. Morris was called in because Mr. Marshall was away at the time it was consummated? A Yes.

Q Both Mr. Marshall and Mr. Morris acted in the same capacity? A As attorney for our interests.

Q You spoke of having met Mr. Robbins at some office in the New Grand Central building subsequent to the conclusion of these nego-

tiations and the making of the contracts; when was it that you met him there? A That was some time after the consummation of this transaction and it was after or about the time that the Yale and Harvard were going to be sent to the Pacific coast, that is, it came out in the newspapers that they were, and I spoke to him about that and the matter came up through some attorneys.

Q It appears by the evidence in the case that the boats left here for the Pacific coast in October of 1910; was it about that time? A Either about that time or—yes, about that time.

Re-direct by Mr. English.

Q You say the matter came out in the newspapers; what came out in the newspapers? A That the boats were going to be sent to the Pacific coast, and it actually came out afterwards when they were sent.

Q On account of that newspaper report, you sought out Mr. Robbins? A Yes, on account of that and the fact that some of the bondholders and stockholders or both had called me up about it.

Q Bondholders and stockholders of what company? A Of the Metropolitan Steamship Company of New Jersey.

Q I notice in the resolution of the directors of the New Jersey defendant company as set forth in Exhibit C. 5, relating to the sale of the freight boats, that it was "resolved that whereas, the remaining vessels of the line, to-wit, the Yale and Harvard, have been run profitably and it is the purpose and intent of this company to retain the said Yale and Harvard and maintain the passenger service car-

ried on by said vessels between the ports of New York and Boston," etc. Does that call to your recollection what the arrangement was the time these resolutions were passed with reference to the Yale and Harvard?

Mr. Faulks. We object to that question as being improper, on the following grounds; first, that it is irrelevant and immaterial and incompetent; and second, that it does not appear that there was any such arrangement, or if there was, that this witness knew of its existence; and third, it is another one of the questions which attempt to characterize what was done and call for the witness's conclusions as to what was done or may have been done; it does not appear that he has any knowledge, whatever, on the subject.

A I do not need this paper to refresh my recollection on that score.

Q What is your recollection?

Mr. Faulks. Same objection.

A Mr. Robbins agreed at that time that the run of the Yale and Harvard was to be maintained between New York and Boston.

Q And for what purpose after the negotiations had been completed and consummated and the property transfered and these newspaper reports came out, did you call upon Mr. Robbins?

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

A Simply in respect to the boats being sent out there. I told him that a great many people who had been interested in the property called me up about it; my recollection is at that time

Mr. McKinnon was in Europe and that that wasn't as per the agreement; that is about all there was to it.

Q Can you remember who called you up about it to protest? A I remember one or two; I remember Mr. Englis spoke to me about it; he is the ship builder who had an interest in the property; I don't remember who else, at this time.

Q Did you seek the appointment with Mr. Robbins for the purpose of discussing this matter with him? A I did.

Q When, relative to the consummation of the matter as per Exhibit C. 6; when after that? A Sometime after, I think it was in the following summer. Mr. McKinnon went to Europe the following summer, and it was during the period he was away.

Q Did you make your appointment with Mr. Robbins by telephone or by letter? A My recollection is that I called him up and got him in New Haven and made an appointment to meet him in New York.

Q And as a result of that appointment the conference was held? A Yes.

Q Can you tell us what you said to Mr. Robbins and what he said to you relative to the transfer of the Yale and Harvard to the Pacific coast?

Mr. Faulks. We object to that as incompetent and as not binding or admissable as against any of the defendants in this suit.

A I think I have already testified to the fact that I called to his attention to the fact that a great many people interested in the company were very much disgruntled at that procedure, and that it was not in accordance with

the agreement we had at or about the time of the closing of the transaction of the sale of our securities, and my recollection is that he said that the New Haven Railroad had nothing to do with it, and that he did not care to discuss it with me; it was a very short meeting.

Q Did you seek out Mr. Nicholson, your purchaser, when that rumor of the transfer came about? A No, I made no effort to.

Q Did you seek out Mr. Chase, his counsel? A No.

Q Did you seek out Mr. Canfield who appeared as the purchaser? A No.

Q Why did you go to Mr. Robbins?

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

A Because I considered he was the man that knew about it and had made the agreement which was, I thought, being repudiated, and that he was the man that controlled the situation.

Q When you defined the three sources of the bonds which were used in payment of the freight boats, have you any knowledge of any other source from which they came, other than the three which you have named? A There may have been; I know that Mr. Fernald owned lots of the bonds.

Q Of Boston? A Yes. Mr. Englis owned bonds.

Q Have you any positive knowledge that any other bonds than those from the three sources that you named were turned over on the exchange? A I cannot testify to that positively without refreshing my recollection.

Q Have you any knowledge of the appraisals that were made prior to the transfer of the freight boats and dock equipment? A Yes, I remember there were appraisals.

Q Do you remember by whom the appraisals were made? A Yes, there were appraisals made by Mr. McGregor, an engineer here in New York, and also by someone in Boston, I believe, selected by the trustee.

Q Do you remember how many appraisals were made? A No, I do not; my recollection is there were two at least.

Q Did the appraisals or copies of them come to your hands? A They came to the hands of the company.

Q The Assets company? A The Assets company or the Metropolitan Steamship Company of New Jersey.

Q Did you submit those appraisals to anybody on behalf of the proposed purchaser of the property? A Personally I did not.

Q Did you know by whom they were submitted on behalf of the purchasers? A No, I do not.

Q Do you know to whom? A No, I do not.

Q Have you any knowledge from which you could say whether or not those appraisals ever came to the hands of Mr. Robbins? A I cannot testify about that.

Q You have no knowledge? A No.

Q Can you tell me how it came about that you met Mr. Mellen at the office of the New Haven Railroad, in the Grand Central Station in New York?

Mr. Faulks. We object to that as irrelevant and immaterial.

A Yes.

Q How did it come about; did he seek you out or did you seek him out? A We made an appointment; that is, Mr. McKinnon and myself.

Q With whom? A With Mr. Mellen.

Q For what purpose?

Mr. Faulks. Same objection.

A For the purpose of discussing the understanding that we were told by Mr. Morse that he and Mr. Morse had with respect to the Metropolitan.

Q When you got there did you discuss the understanding? A We did.

Q Do you know who Mr. Mellen is or was at that time? A Yes, sir.

Q What? A He was the president of the New Haven Railroad.

(Last three questions and answers read to the witness.)

Q From whom had you learned what that understanding was? A From C. W. Morse.

Q When you met Mr. Mellen in his office was the understanding referred to? A Yes.

Q Did Mr. Mellen tell you what the understanding was? A No, we told him what Mr. Morse had told us.

Q Did he deny or confirm what you told him Mr. Morse had said?

Mr. Faulks. We object to that as irrelevant, incompetent and immaterial, and as calling for a conclusion on the part of the witness.

A He didn't directly deny or didn't directly affirm it. What Mr. Mellen said was, that when he had discussed this matter with Mr. Morse

he understood that there were no short term notes against the Metropolitan Steamship Company of New Jersey.

Q And when you said in your last answer, "this matter," what matter did you refer to? A The matter of the arrangement which Mr. Morse told us he had with Mr. Mellen, and that was an arrangement—

Mr. Faulks. I think you have answered the question. If you are going further, I will make an objection.

Mr. English. Go on and object.

Mr. Faulks. I object to the statement that the witness is evidently about to make, on the same grounds that I have objected to the evidence relating to this arrangement, and the further ground, that anything that Mr. Morse may have said to the witness or Mr. Mellen may have said to the witness is not binding upon any of the defendants in this case or evidential against them.

Q What did he say the arrangement was? A What did Mr. Morse say?

Q What did Mr. Mellen say the arrangement was? A Mr. Mellen didn't say—

Mr. Faulks. I make the same objection.

A (Continuing.) We recited the arrangement to Mr. Mellen as disclosed to us by Mr. Morse, and his reply was that when he had discussed this matter with Mr. Morse, he didn't know anything about these outstanding short-term notes of which there was a considerable amount.

Q Can you say whether at that conference which you and Mr. McKinnon had with Mr. Mellen, the question of the sale of either the prop-

erty or securities or both of the New Jersey Metropolitan Steamship Company was discussed?

Mr. Faulks. Same objection.

A My recollection is that it was discussed, but that it was a very short discussion. Mr. Mellen assumed the attitude that he wasn't interested in it.

Q So that up to that point these negotiations were fruitless? Nothing was accomplished? A Nothing was done as the consequence of that meeting, as far as I know.

Re-cross by Mr. Faulks.

Q Was this agreement or arrangement which you say was made with Mr. Robbins, with reference to the continued operation of the Yale and Harvard between Boston and New York, one in writing? A No, sir.

Q When do you say it was made, Mr. Carrington? A It was discussed at one or two of the meetings leading up to the execution of the papers, and also was confirmed at the time of the consummation of the transaction.

Mr. English. Between whom?

Q When you say that this subject was first discussed with Mr. Robbins, by whom else was it discussed at that time? A Between Mr. McKinnon and Mr. Robbins in my presence; just what one of the different meetings at which it took place, I am unable to state.

Q Where did the meeting occur? A At the office of the Assets Realization Company.

Q Was anyone present other than Mr. McKinnon, Mr. Robbins and yourself? A Mr. Shaw may have been present; I think he was

at one of them; I don't remember anybody else, whether they were or not.

Q Did you take part in the discussion or was it between Mr. McKinnon and Mr. Robbins? A I don't know whether I did or not.

Q You don't remember your having said anything? A No.

Q What did Mr. Robbins say? A Mr. Robbins said in effect—

Q I want your best recollection of what he said, if you can give it; if you cannot give the words, give the substance. A I cannot give you the words; I will give you the substance, and that was that the Yale and Harvard would maintain the run—continue the run between New York and Boston.

Q How did he come to make that statement? A Because he was asked to.

Q By whom? A By Mr. McKinnon.

Q What did Mr. McKinnon say? A He took up the question of the policy to be pursued as far as the Yale and Harvard were concerned.

Q Did Mr. Robbins say as to how long those boats would be continued in that service? A No, my recollection is he did not.

Q Did he say anything more than what you have already stated? A That is the substance of it.

Q Nothing else that you can recollect? A No.

Q When was the subject discussed again at any time when you were present? A It was discussed at the time of the consummation of the transaction.

Q Was it discussed at more than one meeting before that time? A I would state positively at least once.

Q That is the only time prior to the consummation of the papers that you have any recollection about? A Yes, positively.

Q Where was any discussion with regard to that matter had at the time that the transaction was consummated? A At the Assets company's office.

Q On the day that the contract with Mr. Nicholson was signed? A Yes.

Q Who was present when that discussion took place? A Mr. Robbins, Mr. McKinnon and myself, and whether there was anybody else, Mr. Shaw or Mr. Morris, at that time, I don't know.

Q Yon don't recollect anybody being present except Mr. McKinnon, Mr. Robbins and yourself? A Yes.

Q But others may have been? A That is correct.

Q Did you take any part in the discussion that was then had? A My recollection is, not about that thing particularly; I did about lots of the other things.

Q I am only interested now in this particular matter. A I don't think that I entered into that discussion at all.

Q What was said by Mr. McKinnon, if anything? A In substance, that he asked him about the policy to be pursued in the future as far as the Yale and Harvard were concerned, and I have given you the substance of Mr. Robbins' position as far as that is concerned.

Q Mr. Robbins said substantially the same thing as he had said at the first discussion of the matter? A Yes.

Q Anything more? A I don't think he added to that.

Q You have referred to some understanding that you had with Mr. C. W. Morse; is that the gentleman who is now sitting in back of Mr. English? A One of them.

Q You recognize the Mr. Morse you referred to as one of the gentlemen in the immediate vicinity of Mr. English at this time? A That is correct.

Q And he was also here when Mr. McKinnon's deposition was taken the other day? A I saw him at the session; I don't know whether he stayed through it all.

Re-direct by Mr. English.

Q Do you know Mr. Thomas B. McGovern? A Yes, I have met Mr. McGovern.

Q Do you know what his business is? A Nothing except what I have seen on a letter-head at one time.

Q That was what? A Broker.

Q Did you ever have any negotiations or business with Mr. McGovern? A Personally never.

Q Were you present at any negotiations which were had with him? A No.

Q How did you happen to meet him, then? A I met him after this transaction was consummated.

Q You speak of the one set forth in Exhibit C. 6? A Yes.

Mr. Faulks. It is stipulated and agreed that the further taking of the evidence of Mr. Carrington under the notice is adjourned from day to day for one week.

(It is further stipulated and agreed by counsel for all the parties that inasmuch as the papers produced by the witness and

marked Exhibits C. 8, C. 9, C. 10 and C. 11, are original papers, true copies thereof may be submitted by the Master in place of the original exhibits.)

By consent of all parties a further adjournment of the taking of the evidence of Mr. Campbell Carrington was taken from Friday, November 7th, 1913, to Thursday, November 20th, 1913, at 2 P. M.

CAMPBELL CARRINGTON, recalled for further

Re-direct examination by Mr. English.

Q Mr. Carrington, it appears from an exhibit which was put in evidence at the time of the taking of your testimony, which is marked Exhibit C. 9 (Book of Exhibits, p. 17) that one bond of the 347 bonds was to be sent to Mr. Edward T. Canfield, by mailing it to the Second National Bank of New Haven, Connecticut, and the last time you testified, you were uncertain in your recollection as to whether that bond had been mailed. Have you now been able to discover any correspondence or receipts with relation to it? A Yes.

Q What do you find? A I find a letter from the Second National Bank at New Haven, Connecticut, addressed to the Assets Realization Company, dated March 15th, 1910, which is self-explanatory.

Q You produce that letter? A Yes.

Q Did that letter receive a reply from you? A It did.

Q Under what date? A March 16th, 1910.

Q Have you a copy of the letter of reply? A Yes.

Q Will you produce that? A Yes. (Producing same.)

Q Did you in connection with the letter of March 16th forward the bond which was mentioned in the receipt Exhibit C. 9? A Yes.

Q Did you get a receipt from the bank? A It was sent by registered letter, and I have a registered receipt for it. I also have a letter from the bank, dated March 18th.

Q Acknowledging receipt of the bond? A Acknowledging receipt of the bond.

Q So that the registration receipt is not necessary in view of the letter? A I assume not.

Q It covers the same thing? A Yes.

Mr. English. I offer in evidence the letter addressed by the Second National Bank of New Haven, Connecticut, to the Assets Realization Company, dated March 15, 1910.

(Marked Exhibit C. 12.)

Also, letter of reply, addressed by the Assets Realization Company to the Second National Bank of New Haven, dated March 16, 1910.

(Marked Exhibit C. 13.)

Also, the letter addressed by the bank to Mr. Carrington, dated March 18, 1910, acknowledging receipt of the bond.

(Marked Exhibit C. 14.)

Mr. Faulks. I have no objection to them.

Q Did you personally dictate and sign the letter of March 16, 1910, to the bank? A It has my initials on it, and it is customary for my initials to be on any letter that I dictate.

Q At the previous evidence given by you, on page 145 of the typewritten transcript of your deposition, I asked you if you remembered who were the new directors of the defendant company

which were elected following the closing out of the transfer of the securities in accordance with Exhibit C. 6; you stated that you did not remember. Have you made any search of your papers, to see if you could find any data to refresh your recollection on that? A Yes, I have.

Q Did you find anything? A No, I did not.

Q Do you know in whose possession the necessary data would be? A It should be in the minute books of the Metropolitan Steamship Company.

Q On page 146 of the transcript of your previous evidence, I questioned you about item No. 5 in Exhibit C. 7, which item refers to a duplicate deposit slip in the Chase National Bank, covering a deposit of $266,387.13; have you been able to get any further information about that? A No, I could not give you a proper statement of that item without recourse to the records of the Metropolitan Steamship Company.

Q What records, to your recollection, were turned over to the Metropolitan Steamship Company which would bear on this question? A The general books of the Metropolitan, including the account books.

Q On page 163 and again on page 165 of the transcript of your testimony last given, you were asked as to your knowledge of the bonds which were given in purchase of the freight boats or dock property prior to the transfer of the securities in accordance with Exhibit C. 6. Have you now made any examination of your records, from which you can give us any further information about those bonds? A I can simply tell you how the million dollars of bonds were made up, if you desire me to do so.

Q You speak of a million dollars of bonds; 650 of those went to pay for the freight boats and the balance for the dock property? A That is my recollection.

Q Tell us how that million dollars was made up?

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

A $553,000 of those bonds came through the Metropolitan Syndicate; $100,000 from the National Bank of North America, and $347,000 from the Hudson Navigation Company.

Q When you speak of the syndicate, you are referring to the bonds controlled by the Assets Realization Company? A Well, the bonds controlled by the syndicate, and the Assets Realization Company? A Through the syndicate, yes, sir.

Q And those were the bonds which went in payment of the freight boats and the dock property which were transferred to Messrs. Wing & Russell? A I think so.

Q Do you know to whom those bonds were delivered by your interests prior to the closing out of the transfer of the boats and the dock property?

Mr. Faulks. Same objection.

A I don't just understand that question.

Q Apparently these bonds were in the possession or control of the Metropolitan Syndicate, Mr. McKinnon as shareholders' agent of the North America and the Hudson Navigation Company, and apparently these bonds were placed in the possession of the purchasers of the dock property and of the freight boats, inasmuch as they were the consideration paid to

the Metropolitan Steamship Company of New Jersey, and in view of that situation as disclosed by the evidence in the case, I now ask you if you can say to whom your interests originally delivered this million dollars of bonds prior to the transfer of the title of the freight boats and the dock properties?

Mr. Faulks. I object to that question as being clearly improper and incompetent. It contains recitals of alleged facts and occurrences to which there is no support in the evidence, and requires an assumption by the witness of facts which do not appear in evidence.

A I think the best answer I can make to that is to refer to the agreements.

Q I therefore call your attention to Exhibit C. 6, which speaks of 553 first mortgage bonds of the Metropolitan Steamship Company as belonging to the Assets Realization Company, and also that by the said agreement the Assets Realization Company agrees to deliver another $100,000 of said first mortgage bonds, and I ask you if those two items are the bonds which you previously mentioned as having been turned in by the Metropolitan Syndicate and the Bank of North America, respectively, as a part of the bonds which went to make up the million dollars?

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

A Yes, sir.

Q I also call your attention to Exhibit C. 9, which speaks of 347 of those same first mortgage bonds delivered to Mr. Canfield, and I ask you if they are not the bonds of the Hudson Navi-

gation Company, which you say were turned in as a part of the million dollars?

Mr. Faulks. Same objection.

A Yes, sir.

Q I call your attention to the testimony of Mr. McKinnon, on page 78 of the transcript, where he says that the bonds given in payment for the freight vessels sold were first turned over to the trustee, under the terms of the trust deed, and were not cancelled, but are kept alive today. Have you any knowledge of that also?

Mr. Faulks. I object to that question as clearly improper in form and one which is incompetent. The use attempted to be made of Mr. McKinnon's evidence in this manner is improper.

A I have no direct knowledge of that. I wouldn't say that it is not so or whether they are cancelled or not cancelled, because I have never been to the American Trust Company to find out.

Q Do you know of any consideration in addition to the $1,400,000 which was paid pursuant to Exhibit C. 6, which was paid for the freight boats and dock property? A I don't know of any other consideration. I understand your question refers to the consideration paid by Douglas Nicholson to the Assets Realization Company under that agreement Exhibit C. 6, and my answer is meant to be that under that agreement we did not receive any further consideration, except with respect to the one hundred thousand dollars of bonds and other securities from the National Bank of North America.

Q And isn't it a fact that no further consideration was paid for the transfer of the freight

boats and the dock property by the purchaser thereof, except the $1,400,000?

Mr. Faulks. Objected to as leading.

A It seems to me that your question assumes that the $1,400,000 went to the Metropolitan Steamship Company for the freight boats and the wharf property. That is not the agreement and that is not what was done. The bonds were sold under this, and they may have been used for the payment of the dock property and the freight boats, but I do not want to say that the $1,400,000 went for the payment of the dock; that is what I want to be free from, ambiguity.

Q Did any other consideration pass to the Metropolitan Steamboat Company of New Jersey in exchange for the freight boats and dock property, except the $1,000,000 of bonds which was turned in?

Mr. Faulks. We object to this question as leading and also upon the ground that it is improper, because it calls for a conclusion on the part of the witness, instead of for his knowledge as to what the consideration was in connection with such transfer.

A Not to my knowledge.

Q Have you any knowledge of the object which it was desired to attain by the transfer of the million dollars of bonds in the way in which you have described and the turning over of these bonds to the trustee under the mortgage?

Mr. Faulks. I object; there is nothing in the evidence to warrant any inference or assumption that anything of the kind implied in the question ever took place. I want to point out that there is nothing in the evidence to indicate that the bonds were

subsequently turned over, and the witness has already stated that he has no knowledge in regard to their having been turned over, or to any bonds having been turned over to the trustee.

Mr. English. The testimony of Mr. McKinnon, on page 78, says that these bonds were turned over to the trustee.

Mr. Faulks. The testimony of Mr. McKinnon, as I recollect, does not show that they were turned over to the trustee subsequent to the making of the contract Exhibit C. 6, and it is not proper for the witness to be asked about a question with reference to Mr. McKinnon's testimony bearing on a matter with which he says he had no connection, familiarity or knowledge.

A I haven't any knowledge of the bonds being turned over to the trustee. Of course, I have knowledge of the purport of the agreement referred to here, under which we got our money, and that was what our object was, of course, to sell the bonds and sell the securities and get our money, but as to turning the bonds over to the trustee, you will have to rely upon other sources to get that.

Q What was the object of your interests in turning over the million dollars of bonds as a part of the transaction with reference to the transfer of the title of the freight boats and the dock properties?

Mr. Faulks. I submit that that question is not clear, and further, that the witness has already said that he has no knowledge as to the turning over of the million dollars of bonds or any other amount to any one

in payment of the freight boats and the dock property.

A My answer was meant to convey the fact that I personally had no negotiations and had no part in any arrangements in connection with the trustee in turning over these bonds to them.

Q I will not confine my question to the trustee, but ask you if you did not as a matter of fact know what the general object to be accomplished was in turning over the bonds previous to the transfer of the title of the freight boats and dock property?

Mr. Faulks. I object to that question. There is absolutely nothing in the evidence to warrant saying that that was done.

A I knew that it was the intention to pay for the freight boats and wharf property in bonds; whether that answers your question intelligently or not—

Q With what bonds was that payment to be made, bonds in whose control?

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

A My recollection is the bonds, a part of the million dollars referred to her.

Q Namely, the bonds belonging to the Metropolitan syndicate, the Bank of North America and the Hudson Navigation Company, to which you referred in your testimony today? A Yes.

Q From what person with whom you conducted negotiations did you learn those facts?

Mr. Faulks. Same objection.

A I cannot say; it was a part of the general negotiations that took place at the time, and

whose idea it was or conception, I cannot remember at all.

Q Did you get that idea from Mr. Nicholson?

Mr. Faulks. Same objection.

A I would say "No."

Q Did you get it from Mr. Canfield?

Mr. Faulks. Same objection.

A No.

Q Did you get it from Mr. Chase?

Mr. Faulks. Same objection.

A I wouldn't say no or yes to that, after I exclude Mr. Nicholson and Mr. Canfield, and I exclude them because I don't think I ever met them up to the consummation of the transaction—at or about the transaction.

Q That left no one but Mr. Chase and Mr. Robbins? A That left Mr. Chase and Mr. Robbins on that side of it, and Mr. McKinnon, Mr. Shaw and myself on the other, in addition to our counsel.

Q Did the suggestion come from your side of the negotiators or from the other side?

Mr. Faulks. Same objection, and the further objection, that the question calls for a conclusion on the part of the witness, when he ought to be asked what was said or done, if he has any knowledge of the matter.

A My recollection is it was not from our side.

Q Can you recollect what was said with reference to that suggestion, which, from what you have now said, must necessarily have come from the other side, and who said it?

Mr. Faulks. I object to that question, upon the ground that the witness has not

said that anything must necessarily have come from the other side, or that anything did come from the other side.

Mr. English. That is my deduction from his evidence.

Mr. Faulks. That is an improper one.

Q What was said at any of those conferences with reference to this matter? A I do not remember; as I have testified, on the first sitting of my testimony, I was not brought into the matter during the early negotiations. From the nature of the thing, the suggestion would have been made before I came into it.

Q At the last taking of your testimony, something was said, on page 172 of the transcript of the evidence, with reference to the appraisals for these freight boats and dock properties. Did you endeavor to locate any copies of those appraisals? A I have, and have been unsuccessful in doing so.

Q Do you know where they are or would be likely to be? A I assume that the originals are with the trustee.

Q With the trustee under the mortgage? A Yes, the Metropolitan Steamship Company.

Re-cross examination by Mr. Faulks.

Q Under the contract between Mr. Nicholson and the Assets Realization Company dated March 4, 1910, being Exhibit C. 6, the Assets Realization Company sold him $553,000 par value of the first mortgage bonds of the Metropolitan Steamship Company of New Jersey, and also agreed to deliver to him an additional $100,000 of those bonds, did it not? A Yes, sir.

Campbell Carrington, re-cross.

Q Under the transaction mentioned in Exhibit C. 9, being the receipt given by the Hudson Navigation Company to Mr. Canfield, that company sold to Mr. Canfield $347,000 more of those bonds; is that not so? A That is correct.

Q Do you as a matter of fact know anything at all about those bonds, except that they were so sold to Mr. Nicholson and to Mr. Canfield, and that the Assets Realization Company and the Hudson Navigation Company were paid for them? A I know that they were paid for them, and I have also testified that it was the intention to pay for the wharf property and the freight boats by the delivery of bonds to the trustee.

Mr. Faulks. I move to strike out the portion of that answer which followed the statement of the witness that he knew that the bonds were paid for, as not being at all responsive to my question.

Q Let me point out to you, Mr. Carrington, that I did not ask anything about the intention, but whether you knew anything about those bonds, except that they were sold to Mr. Nicholson and to Mr. Canfield, and were paid for, and that the Assets Realization Company received the agreed purchase price? A I cannot testify from my own knowledge what became of the bonds after the sale and delivery of them to the purchasers under these agreements.

Q You have no knowledge whatever on that subject? A I have no direct knowledge.

Q You have no direct knowledge as to whether any of them were ever delivered to the trustee under the mortgage or not? A I have no knowledge except from information and belief.

Q The question is, whether you have any direct knowledge? A If you ask me that way, I will say I have not.

Q These are the bonds that were delivered by you under contracts covering these transactions to which I have just referred, are they not, the contract with Mr. Nicholson, Exhibit C. 6, and the receipt of the Hudson Navigation Company, Exhibit C. 9? A Yes, by the Assets company and the National Bank of North America and the Hudson Navigation Company.

Q Your only interest in this matter was the sale of those securities for the benefit of the Assets Realization Company, the stockholders of the Bank of North America and the Hudson Navigation Company, at the best price that could be obtained, and the payment of the purchase price, isn't that so? A That is entirely correct.

Mr. English. That closes the testimony under the notice.

(It is stipulated and agreed by counsel for all the parties that inasmuch as the papers produced by the witness and marked Exhibits C. 12, C. 13 and C. 14, are original papers, true copies thereof may be substituted by the Master in place of the original exhibits.)

J. MARKHAM MARSHALL, sworn for complainant.

Direct examination by Mr. English.

Q You live where? A New York City.

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

Q You are a lawyer by profession? A Yes.

Q And your office is in New York City? A 25 Broad street, New York City.

Q Do you know Mr. John W. McKinnon? A I do.

Q Do you know Mr. Campbell Carrington? A I do.

Q Do you know the Assets Realization Company? A I do.

Q Do you know Mr. Edward D. Robbins? A I have met him, yes.

Q General counsel of the New Haven Railroad? A I think he was the general counsel.

Q Do you know Mr. Charles E. Mellen? A No, I never met him.

Q Did you ever have any business relations with Mr. McKinnon or Mr. Carrington, or either of them and Mr. Robbins, with reference to the sale of the Metropolitan Steamship Company of New Jersey? A I did.

Q When did your connection with the matter first begin? A Early in the year 1909.

Q And at that time was the Metropolitan company in the hands of receivers? A The Metropolitan Steamship Company of Maine was in the hands of receivers.

Q Receivers appointed in the Federal Court? A Circuit Court of the United States for the District of Maine.

Q What was your connection originally with the matter when the company was in the hands of receivers? A I represented George E. Shaw, John W. McKinnon and Henry Hornblower, reorganization managers of the Metropolitan Steamship Company of Maine.

Q They were attempting to reorganize the concern in the interest of the creditors? A Yes.

Q And you represented them at that time? A Yes.

Q I think it already appears that that committee bought the freight boats and the Harvard and Yale and the wharf properties at the receivers' sale; you know that fact? A Bought it at the foreclosure sale; I was there.

Q And then afterwards the defendant company, the Metropolitan Steamship Company of New Jersey, was incorporated to take over that property, was it not? A Incorporated in the autumn of 1909, according to my recollection, under the laws of the State of New Jersey.

Q And did in fact take over the property which that committee had bought at the foreclosure sale? A In the first instance John W. McKinnon, who had bought in the property at the foreclosure sale for the reorganization managers, transferred to that company his contract of purchase, and subsequently, pursuant to the contract of purchase, the property was conveyed to that company by a Master's deed.

Q Direct from the— A From the Master who made the sale under foreclosure.

Q So that placed the property in the hands of the company? A Yes.

Q You are generally familiar with the plan of reorganization, are you not, as embodied in the plan and agreements of reorganization, which are in evidence here as Exhibit C. 1? A Yes, and I drew this plan and agreement of reorganization.

Q And did you draw the little modification of them with reference to the issuance of notes? A I don't think it was ever modified.

Q The evidence shows there was some slight modification of it? A My recollection is that

that plan was carried out strictly according to its terms, and after the property had been conveyed to the Metropolitan Steamship Company of New Jersey, the creditors' committee agreed to accept the claims and notes of the Metropolitan Steamship Company of Maine which it held, ten year notes, instead of stock of the Metropolitan Steamship Company of New Jersey.

Q That is what I had in mind. Did you have anything to do with that? A Yes.

Q It already appears that Mr. McKinnon and his associates controlled a majority of the stock of the defendant company; you knew that fact, did you not? A The reorganization managers did.

Q I mean that. Are you familiar with the fact that those gentlemen on or about March 5, 1910, sold their interest in those stocks and other securities of the company? A Yes, I know that they did.

Q Were you present at the final winding up of the matter? A No, I was out of the city at that time.

Q Had you anything to do with the preliminaries which led up to that sale in March, 1910? A I had had to do with the negotiations between reorganization managers and Captain Goodall, and subsequently I had had to do with negotiations commenced by Mr. Robbins, after the Goodall negotiations had fallen through.

Q When, roughly, did the Goodall negotiations begin and when did they fall through? A May I refresh my recollection?

Q Certainly. A From my correspondence?

Mr. English. There is no objection to that, Mr. Faulks?

Mr. Faulks. No.

A (Continuing) So far as I know, I first met Captain Goodall and Mr. McGovern, Mr. Robbins and Mr. McKinnon, with reference to the proposed sale to Captain Goodall, at my office on November 18, 1909.

Q And what was the negotiation which was pending at that time? A As explained to me, Captain Goodall wished to buy—

Mr. Faulks. I want to enter an objection to that as being irrelevant, immaterial and incompetent, and as not evidential against the Metropolitan Steamship Company or its directors, defendants in this suit.

Mr. Ward. Same objection on the part of the Pacific Navigation Company, and the additional objection that it is not evidential, because that company was not then in existence.

A (Continuing) As explained to me, Captain Goodall had entered into negotiations with the reorganization managers for the purchase of the securities of the Metropolitan Steamship Company of New Jersey, which they were to acquire as such reorganization. As an incident to such negotiations, Captain Goodall, through Mr. McGovern, as I understood it, and as was explained to me, had to obtain a purchaser for a portion of the securities which he expected to buy from the reorganization managers, and Mr. Robbins informed me that he represented parties who were willing to assist Captain Goodall in his proposed contract of purchase.

Q You have said the Goodall negotiations failed of consummation; when did they definitely fail? A In January, 1910, say in December, 1909, or January, 1910.

Q What was the cause of the failure? A Captain Goodall, as I recall it, wanted the reorganization managers to furnish the ships and the money and he was going to furnish the ocean. That is the way the matter was presented to my mind.

Q When did you become connected with the negotiations which finally resulted in the sale of the securities by the Assets Realization Company on March 5, 1910? A I don't understand that the Assets Realization Company ever sold—

Q I will correct my question—resulted in the sale by the reorganization managers on March 5, 1910? A Sometime in January. May I refresh my recollection?

Q Yes. A In January, 1910.

Q That is when you first got into it? A No, I had been negotiating with respect to the proposed Goodall purchase from November or until the collapse of those negotiations; thereafter, Mr. Robbins came to see me to commence negotiations for a sale of those securities.

Q Mr. Robbins was the man that started the matter up after the Goodall negotiations had failed? A Yes.

Q When you say Mr. Robbins, you mean Mr. Edward D. Robbins, who you understood to be the general counsel of the New Haven Railroad? A I mean Mr. E. D. Robbins; he was general counsel of the New Haven Railroad.

Q And did he come to you in that matter or did he go to Mr. McKinnon and did Mr. McKinnon refer him to you? A No, he came to my office.

Q Here in the city? A Yes, sir, 25 Broad Street.

Q Do you remember approximately when that was? A Sometime in January, 1910.

Q Did he state the object of his visit? A Yes.

Q What did he say?

Mr. Faulks. Same objection as to last question that was objected to.

Mr. Ward. Same objection.

A He said that he represented clients who would like to enter into negotiations for the purchase of the securities held by the reorganization managers.

Q Did he at that time disclose the name of his clients? A No, not at that interview.

Q What did you do then following that interview with him with reference to this matter? A I didn't do anything; I waited until I saw him again.

Q Did you have any interviews with the reorganization managers in the meantime? A I told them that Mr. Robbins had been to see me.

Q Did they authorize you to negotiate with him? A Yes, they told me to go ahead.

Q Did they fix a figure at which you were authorized to close the deal? A No, they did not, they told me to get a firm bid from him.

Q Did you take it up with him then, or did he get in touch with you next? A I waited until he came again; the next time he came, he came with Mr. Chase.

Q Do you know how long a time elapsed between the first and second visit? A A matter of a week.

Q He sought you out at your office the second time? A He came to my office the second time.

Q Accompanied by Mr. Chase this time? A Yes.

Q W. D. Chase? A I don't remember his initials; he came from Connecticut; I don't know whether he was an attorney or not.

Q Did Mr. Chase take any part in the negotiations on that day, or Mr. Robbins? A Both of them.

Q What happened as a result of the second day's conference? A Nothing.

Q No definite bid was made? A No; what they were trying to ascertain from me was what those securities had cost the reorganization managers in all its details; second, what they wanted to ascertain was what liabilities there might be which they would have to take care of in the event that they became the purchasers of the securities.

Q Did you satisfy them on that point? A To the best of my ability, I did.

Q What was the situation at the end of that conference? A They went away with the figures that I was able to give them, and said I would hear from them again.

Q Did you hear from them again? A Yes, they came in the second time.

Q That would be the third time you interviewed Mr. Robbins, and the second time of Robbins and Chase combined? A Yes. The third time they came in again, Mr. Chase was with Mr. Robbins again.

Q What happened at the third interview?

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

A At the third interview they had been over the figures that I had given them and they were not satisfied with them; they were not satisfied that I had given them the figures correctly. They

wanted confirmation of certain figures; they wanted more exact figures where I had given them approximate figures. Generally, they wanted the most exacting and specific information with respect to the cost to my clients in the purchase of these securities and existing and contingent liabilities of the company.

Q Up to this time, I understand, no definite offer had been made by them? A No.

Q Were you able to satisfy their desires with respect to the third conference? A I suggested at the third conference that perhaps matters might be expedited if they would take the matter up directly with my clients.

Q Mr. McKinnon? A Mr. McKinnon and Mr. Shaw. Mr. Hornblower had ceased at that time to be one of the reorganization managers.

Q Do you know whether they did that? A Yes, I think they did it.

Q Were you present at any subsequent conference between Mr. Robbins and Mr. McKinnon or Mr. Shaw? A I was, yes.

Q Where was the first of the conferences held at which Mr. McKinnon or Mr. Shaw participated? A At Mr. McKinnon's office, across the hall from my office in the Broad Exchange Building.

Q How long was that after the day when you testified that they took it up directly? A I think I took them over after the interview with me.

Q What occurred at that interview with Mr. McKinnon present. A I didn't remain.

Q When was the first interview between Mr. Robbins and Mr. McKinnon at which you were present and participated? A I was at one or two, but only part of the time; I generally left

because they were merely discussing figures and not the legal details of the proposed transaction.

Q Did you ultimately learn what the net result of their negotiations was with reference to the sale of these securities? A I did.

Q What was that net result? A I don't carry it in my mind.

Q Have you got any data in your file? A No, not in my files. Mr. McKinnon could give you all those figures; I think three contracts of sale were made involving the transfer of securities.

Q Do you remember any arrangements for the sale of the freight boats belonging to the Metropolitan Steamship Company? A I remember a conversation that I had with Mr. Robbins with respect to that.

Q Where was that conversation held? A That was held at lunch in the cafe in the Broad Exchange Building.

Q Who was present besides you and Mr. Robbins? A Just he and myself.

Q What was that conversation ?

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

A May I refresh my recollection, because I wrote a letter on the very day involving the details of the conversation?

Q Certainly. A That conversation took place on December 11, 1909, and it was while the negotiations with Captain Goodall were still pending and it related to the part in those negotiations which was to be played by Mr. Robbins' clients, whoever they were.

Q And that part related to the taking over of the freight boats and the dock properties? A Yes.

Q And that was the position of Mr. Robbins in connection with that?

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

A The matter we discussed was this: That Captain Goodall's offer to purchase securities held by the reorganization managers, was contingent upon his being able to sell a million dollars of the first mortgage bonds of the New Jersey company to the clients of Mr. Robbins; his ability to sell the million dollars of bonds to Mr. Robbins' clients was in its turn contingent upon the ability of Mr. Robbins' clients using those bonds to obtain under the release clause of the mortgage the release of the freight steamers and the wharf property in Boston. We had discussed the details of obtaining a release of that property in consideration of the turning in of a million dollars of bonds to the trustee, to be held under the terms of the mortgage by the trustee.

Q And when you speak of mortgage, you mean the first mortgage of the New Jersey company to secure the issue of bonds? A Yes.

Q Did you draw that mortgage? A I did.

Q I show you herewith a printed copy of what purports to be the first mortgage of the Metropolitan Steamship Company to the American Trust Company, dated November 15, 1909; can you say whether that is one of the copies of that mortgage? A Yes.

Q And that was the mortgage which you drew and which was executed to secure the first mortgage bonds? A Yes.

Mr. English. Is there any objection to the form of proof?

Mr. Faulks. No objection based on the fact that it is a copy.

Mr. English. Any objection to the exhibit as such?

Mr. Faulks. I object to it on the ground that it and its contents are irrelevant, immaterial and incompetent.

Mr. Ward. Same objection.

(Mortgage marked Exhibit C. 38.)

Witness. The release clauses to which I just referred are in Article 9, page 43, of the printed mortgage.

Q Do you know whether or not the desired release from the lien of the mortgage by the American Trust Company of the freight boats and dock properties were finally accomplished? A Not while my clients had control of the Metropolitan Steamship Company, according to my recollection.

Q You know as a matter of fact whether that was afterwards accomplished,—that release? A Yes, I have knowledge of that fact.

Q And what is the fact about that? A The fact is that they were released and exchanged for a million dollars of bonds.

Q And do you know how it was turned in the million dollars of bonds which were thus released? A I do not.

Q What bonds were they? A I only could guess at what bonds they were.

Q What else, if anything, did you have to do with Mr. Robbins in connection with the sale of those freight boats and dock properties to his clients?

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

A I think I have told you pretty nearly all that I had to do with it.

Q Did you have any other interview with him in reference to that except at lunch on the day you have named? A With respect to the Goodall contract?

Q With respect to the transfer of the freight boats and dock property to Mr. Robbins' clients? A Oh, yes, we discussed that every time we met; his position was—

Mr. Faulks. I object to this and also stating what Mr. Robbins' position was.

Mr. Ward. Same objection.

A (Continuing) He said, we ought to obtain the release of the freight boat property and the wharf by the American Trust Company, trustee, as a condition precedent to trading with him.

Q Do you know whether that was finally agreed to by your people or not? A No, we always took the opposite position that he ought to purchase the securities and obtain the release.

Q What side won out in the negotiations? A I know we never did it, although I believe we did negotiate with the American Trust Company with respect to it.

Q Did you personally have anything to do with the negotiations? A Yes.

Q With whom did you negotiate on behalf of the American Trust Company? A I didn't negotiate with anybody on behalf of the American Trust Company; I negotiated with Mr. Russell Fessenden, the president of the American Trust Company.

Q As representing the American Trust Company? A Yes.

Q Mr. Fessenden is president? A He was then.

Q Did you go to Boston for that purpose? A I saw him in New York.

Q Did you talk with him over the telephone from New York to Boston? A Yes.

Q And subsequently saw him in New York? A Yes, I saw him several times.

Q And that was with reference to securing the release of the Trust company? A That was with reference to securing a release by the Trust company of the freight boats and wharf property for one million dollars in bonds.

Q Did you secure his promise to that effect on behalf of the Trust company? A My recollection is that I did not.

Q Was anything discussed between you with reference to an inventory or anything of that character before such a release should be given? A Appraisals were discussed.

Q I mean appraisals. A Appraisals were discussed and my recollection is that we had appraisals made and that he had appraisals made, but I am not sure in my own mind as to whether it was carried out while we had it or not; I think it was.

Q Do you know the firm of Wing & Russell in this city, lawyers? A Oh, yes.

Q Do you know what, if anything, they had to do with the transfer of those freight boats and dock properties?

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

A No.

Q Did you meet them in connection with the matter at all? A No, I did not.

Q Apparently the negotiations for the sale of the freight boats and dock properties began

between you and Mr. Robbins when there was still expectation that Mr. Goodall would put through his part of the proposition? A Oh, yes.

Q And then after Mr. Goodall dropped out, the negotiations still continued between you and Mr. Robbins? A Yes; in all my discussions with Mr. Robbins, that was the key to the whole situation.

Q The freight boats and dock properties? A Yes, the ability to have the freight boats released and the dock property released was the basis of financing any purchase that he might make.

Q When was it Robbins first suggested to you, or you learned from him, of his having in contemplation the taking over of the whole outfit as well as the freight boats, including the passenger steamers and everything else?

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

A That was in January, late in January, 1910, but it didn't involve taking over the whole outfit, it simply involved buying from the reorganization managers what securities they held, and some that the Hudson Navigation Company and some of the shareholders of the National Bank of North America held; those three parcels of securities made up the lot that were ultimately sold.

Q Of course they carried with them the control of the physical property of the company? A Yes, the stock carried with it the control.

Q And that physical property in addition to the freight boats and wharf were the Harvard and Yale? A The Harvard and Yale, the freight boats and the wharf in Boston.

Q Were you present when any discussion was had as to the operation of the Yale and Harvard?

Mr. Ward. Same objection.

A That is a very general question; I often heard the operation of the Harvard and Yale discussed.

Q Were you present when there was any discussion by Mr. McKinnon or his associates with reference to the continuance of the operation of the Harvard and Yale between New York and Boston, in case the securities were transferred, including the stock control to Mr. Robbins' clients?

Mr. Faulks. Answer yes or no.

A I do not recall that that was mentioned as incident to any discussion relating to what I may call the second contract, or the second negotiations; that is to say, the negotiations that followed after the collapse of the Goodall negotiations.

Q What did it relate to, if not to that?

Mr. Faulks. The same objection we made to the previous question.

A All that Captain Goodall wanted was the Harvard and Yale, and of course he wanted them for the Pacific trade, and it was well understood that if he became the purchaser, he would take the Harvard and Yale to the Pacific coast.

Q At that time Mr. Robbins' interests were not concerned with the Harvard and Yale? A No, he was going to lend money to Captain Goodall to the extent of $1,000,000, or he was going to buy securities purchased by Captain Goodall from the reorganization managers for a million dollars.

Q What was the million for? A To release the freight boats and the wharf in Boston.

Q Was that part and parcel of the negotiations which were to result in Captain Goodall's securing the Harvard and Yale?

Mr. Faulks. I object to the form of the question as calling for a conclusion on the part of the witness.

Mr. Ward. Same objection.

A If Captain Goodall sold the million dollars of securities, or, putting it in other words, the freight boats and the wharf in Boston, which would be released by turning in the million dollars of bonds, he would have left only the Harvard and Yale, and that is all he was after.

Q What I want to know is, whether anything transpired in your presence, indicating that Mr. Robbins or his interests were aiding the transfer of the Harvard and Yale to Captain Goodall and subsequently to the Pacific coast?

Mr. Faulks. Same objection; I think the witness ought to be asked what was said or done, and not asked to draw conclusions.

Q What was said by Mr. Robbins or his associates with reference to the transfer of the Harvard and Yale to the Pacific coast, so far as his being interested in the result or doing it was concerned?

Mr. Faulks. Objected to on the ground that it is immaterial, irrelevant and incompetent, and not binding upon any of the defendants we represent.

Mr. Ward. Same objection.

A At the first meeting that I had at my office on November 18, 1909, as I have stated

before, the transaction was explained to me in this way, that Captain Goodall was to purchase all of the securities held by the reorganization managers, with a view to obtaining possession of the Harvard and Yale through control of the Metropolitan Steamship Company of New Jersey, and as an incident to his purchase of such securities—in fact, in order to enable him to purchase such securities, Mr. Robbins' clients were to take over off of his hands a million dollars of bonds of the New Jersey Company, which were to be exchanged for the freight boat property and the wharf in Boston.

Q So that at that time Captain Goodall contemplated purchasing the securities?

Mr. Faulks. Same objection.

A That was the basis of his whole trade; he couldn't even commence to trade unless he had that market for a million dollars of bonds, and that was the basis of the whole plan as explained to me. In fact, I was asked to draw a contract along those lines, on November 18, 1909, along with Mr. Burlingham, who came there representing Mr. Goodall. I explained to them that it was premature to suggest drawing the contract, because we hadn't received the Master's deed, and we hadn't received the possession of the property, and I didn't know how long that might take.

Q And on Mr. Robbins' part, his acquiescence in the plan of Captain Goodall depended on his getting the release from the American Trust Company under the mortgage?

Mr. Faulks. The same objection, and I renew my objection to the effect that the question calls for a conclusion on the part

of the witness; he ought to be asked to state what was said or done.

Mr. Ward. I also object on the ground that it is leading.

A Not exactly his acquiescence; his willingness to have his clients buy the bonds of the New Jersey Company depended upon their ability subsequently to use them to obtain a release of the freight boats and the wharf; in other words, he was not buying the bonds in reality, he was buying the freight boats and the wharf.

Q Come down to the point when Captain Goodall dropped out of the matter; was anything ever said by Mr. Robbins to you with reference to his continuing the operation of the Harvard and Yale in case he bought the securities? A No.

Q Did that enter into the negotiations one way or the other, to your knowledge? A No. The proposition when it was made to me in the first instance, before it was made to my clients, was, that he represented clients who would be willing to negotiate with us for the purchase of the securities that we held.

Q Including the stock control? A Including the stock control, but that of course was again contingent upon using a part of the securities so purchased to obtain a release of the freight boats and the wharf.

Q What was said with reference to the using of the securities so purchased to secure the release to the freight boats and wharf?

Mr. Faulks. Same objection.

Mr. Ward. Same objection.

A He asked us to take steps to have them released; I told him that he would have to do that himself after he purchased from us.

Q And as far as you know, he completed the arrangements with the American Trust Company? A I know that arrangements were completed.

Q But not by you? A Not by me personally.

Q Were they completed by persons you represented? A I am speaking from recollection, without anything here to refresh my recollection.

Q I show you Exhibit C. 5 in evidence here, which is a letter written by Mr. McKinnon, as president of the defendant company, to the American Trust Company, trustee, and with which was enclosed a copy of a resolution of the defendant company with reference to the sale of the freight boats, and I ask you if you have any knowledge of either the writing of the letter or the passing of the resolution or either of them? A I don't recall that letter or those resolutions. I would have to refresh my recollection from my own files.

Q How long prior to March 5, 1910, when the matter was closed out, was it that you went out of the city? A I don't remember.

Q A matter of a day or two? A I was away for a couple of weeks at that time, but I cannot recall just now; I would have to refresh my recollection.

Q In connection with your negotiations with Mr. Robbins, did you receive any letters from him? A I have one or two letters from him. They are not very important.

Q Have you a letter written on or about December 14, 1909, from Mr. Robbins to you? A I have.

Q Will you produce it? A Yes, sir.

Q I see that it refers to a letter evidently written by you, of December 11, 1909; can you produce that? A I can produce a copy of it.

Q I mean a copy, unless the other side produce the original. A Yes, sir. (Producing copy.)

Q Do you know Mr. Robbins' signature? A Only as I saw it attached to letters; I never saw him write it.

Q But the letter of December 14, purporting to be signed by him, was received by you through the mail? A Yes.

Q And the carbon copy on pink paper, of your letter of December 11th, is a carbon copy of the letter which you wrote? A Yes.

Mr. English. I offer in evidence carbon copy of the letter of December 11, 1909, from the witness to Mr. Robbins.

(Marked Exhibit C. 39.)

(Exhibit C. 39.)

December 11, 1909.

re Metropolitan
Steamship Co.

PRIVATE AND
CONFIDENTIAL.

EDWARD D. ROBBINS, ESQ.,
Attorney and counsellor at law,
New Haven, Conn.

Dear Sir:—

Pursuant to our conversation at lunch today, I write you my views in regard to the details of carrying out the transaction discussed by us, my understanding being that any suggestions made by you or by me are merely tentative, and that

neither you nor I are finally bound by them. I add this proviso because you suggested it at the conclusion of our conversation.

First: Metropolitan Steamship Company must, to begin with, not only obtain the entry of an order directing the receivers to turn over the vessels and other property of Metropolitan Steamship Company—of the State of Maine—in the Circuit Court of the United States for the District of Maine, but must also obtain ancillary orders in the ancillary proceedings pending in the Circuit Court of the United States for the District of Massachusetts and in the Circuit Court of the United States for the Southern District of New York. I expect to have such orders entered in the various jurisdictions by Monday or Tuesday at the latest.

Second: Metropolitan Steamship Company must complete the new enrollment of the several vessels at the Port of New York; five of the vessels have already been enrolled and new certificates of enrollment are required only for the Harvard and Yale, James S. Whitney and H. F. Dimock; a new certificate for the steamship H. F. Dimock cannot be obtained until she is placed in commission and a new certificate of inspection obtained.

Third: The details above referred to having been completed, or pending the completion of these details, my principals propose to enter into a contract with Captain Goodall, upon terms to be agreed upon between them and Capt. Goodall, for the sale of their interest represented by bonds, notes and stock of the company.

Concurrently with this agreement, Messrs. Hayden, Stone & Co., bankers, are to enter into a contract with Metropolitan Steamship Com-

pany for the purchase of the vessels and property of said company, other than the steamships Harvard and Yale, for $————, said contract and the payments to be made thereunder by Hayden, Stone & Co. to be conditioned upon the ability of said Metropolitan Steamship Company to obtain a release of such vessels and other property from the lien of the existing mortgage of the Metropolitan Steamship Company. In all other respects the contract is to be a firm contract and unconditional as to both parties.

Fourth: The contract between Messrs. Hayden, Stone & Co. and the Metropolitan Steamship Company shall provide, in the event that such release cannot be immediately obtained, that the vessels of Metropolitan Steamship Company other than the Harvard and Yale shall be chartered pending such release, upon such terms as may be agreed upon to a new company, proposed to be formed by Hayden, Stone & Co. The proposed company is to be organized under the laws of the State of Maine and is to be known as Metropolitan Transportation Company, and its charter is to provide, among other things, that it is organized for the purpose of carrying on a freight business by water between the ports of Boston and New York.

The disposition of the Harvard and Yale can be arranged between Captain Goodall and the present owners of Metropolitan Steamship Company.

Fifth: When the release of the vessels and other property of Metropolitan Steamship Company is arranged, a bill of sale is to be given of the vessels, in which the trustee shall join, as provided in the mortgage, for the purpose of

effecting such release, and a bill of sale and deed of the personal and real property is to be similarly delivered to Messrs. Hayden, Stone & Co. or their nominee.

Kindly let me have your views and suggestions with respect to this matter, and oblige,

Yours very truly,

J. Markham Marshall.

Registered mail.

Mr. English. I also offer in evidence the letter of Mr. Robbins in reply, dated December 14th, 1909.

(Marked Exhibit C. 40.)

"Law Offices of
Edward D. Robbins.

New Haven, Conn., December 14, 1909.

PRIVATE AND CONFIDENTIAL.

J. Markham Marshall, Esq.,
25 Broad Street, New York City.

Dear Sir:

I have received your letter of December 11th.

As I suggested to you in our conversation, difficulties may appear in arranging the details necessary to carry out your plan.

My suggestion was that you make a draft of the contract that you have in mind, and send it to me for my consideration, and I understood that you were going to work upon this Sunday at the Bar Library. Do you see any objection to taking this course?

Very truly yours,

Edward D. Robbins."

Mr. Faulks. I would like to ask Mr. Marshall if the blank appearing in the last paragraph on page 2 of the carbon copy, Exhibit C. 39, was filled in before the letter was sent?

Witness. No, it was not.

Mr. Faulks. I object to the receipt of the letter in evidence, and both of those letters, on the ground that they and their contents are irrelevant, immaterial and incompetent, and not binding on the defendants whom I represent.

Mr. Ward. Same objection as heretofore on the part of the Pacific Navigation Company.

Q In Mr. Robbins' letter to you, Exhibit C. 40, he contemplated the drawing of a draft of a contract; did you do that? A No, I never did.

Q Why not? A I don't recall why I didn't draw that contract; I know I never did draw one.

Q I see in the proposition as set up in your letter to Mr. Robbins, Exhibit C. 39, that Hayden, Stone & Co., bankers, were to enter into a contract to purchase the vessels and property of the Metropolitan Steamship Company of New Jersey other than the Harvard and Yale. That referred to the freight boats and the wharf property? A Yes.

Q Do you know who Hayden, Stone & Co. are, or were at that time? A Bankers of Boston and New York; I should say at this point, that their name was used by us in our conversation;

I say by us, I mean by Mr. Robbins and myself, without any previous authorization from them.

Q Did Mr. Robbins introduce their name to the conversation or did you? A I really cannot recall; the proposition was that a firm of bankers should make the offer and we would use their name; their name was suggested.

Q Why was the proposition that a firm of bankers should offer to buy these ships?

Mr. Faulks. Same objection.

A I don't remember that.

Q Then I see it was further set up in this letter, C. 39, that Hayden, Stone & Company should cause to be incorporated a new company, under the laws of the State of Maine, to operate these same boats; do you know why that was suggested?

Mr. Faulks. Same objection.

A That was in the event that the boats were not released, according to my recollection, by the American Trust Company; that company was to be incorporated to operate them under a charter, pending the obtaining of such a release, so that the closing of the Goodall transaction might not be delayed by awaiting the release.

Q I see that the proposition contemplated in case the release was obtained, the execution of a bill of sale to Hayden, Stone & Co., or their nominees; was any nominee suggested at that conference? A No.

Q Who was to furnish the name of the nominee, Mr. Robbins?

Mr. Faulks. Same objection.

A Mr. Robbins.

Q This correspondence marked Exhibit C. 39 and C. 40 relates to the stock at the time when it was expected that Captain Goodall would make good on his proposition? A It so stated in paragraph 3.

Q And it was after that that he fell down in the matter? A It was after that, yes, sir.

Q And it was after this that you opened up negotiations with the American Trust Company with reference to the release of the freight boats? A Yes, after that letter was written.

Q Did you have anything further to do with the matter after the closing of the transaction by Mr. McKinnon and his associates in March of 1910? A No—well, there were lots of incidental matters that I handled.

Q What in connection with this matter? A There was some litigation as to whether receivers' certificates B. and C. of the old Metropolitan Steamship Company were a lien on the fund in court, or ahead of the old mortgage bonds or not; a question as to certain lien claims, whether they were a lien ahead of the old mortgage bond on the fund in court; there were a great many questions left to be disposed of with respect to the old receivership, nothing with respect to the sale.

Q You were endeavoring to clear this all up so as to give these purchasers a clear title? A Oh, no, it had nothing to do with that.

Mr. Faulks. Simply a division of the proceeds of sale?

Witness. Yes, and of the money in the hands of the receivers derived from operation.

Q Did you ever meet Mr. Douglas Nicholson in that matter? A I don't recall ever meeting him.

Q Did you meet Mr. Chase in the matter? A Yes.

Q W. D. Chase? A I don't remember his initials; I met a Mr. Chase who came to my office on two occasions with Mr. Robbins.

Q Did you ever meet a Mr. Canfield in the matter? A No; that is, if I did, I don't recall it.

Q Did you ever have any conversation with Mr. Robbins after the matter was closed out early in March? A I think I met Mr. Robbins a year later on the street—more than a year later, on the street.

Q Have any conversation about this matter at that time? A I stopped for a moment and told him that I had the pleasure of going up from San Pedro to Los Angeles on the Yale.

Q Did he seem surprised to find that they were out on the Pacific coast? A I don't remember his expressing any surprise.

Mr. Faulks. No questions.

Mr. Ward. No questions.

PHILIP W. RUSSELL, being duly sworn according to law, on his oath says:

Direct examination by Mr. English.

Q Where do you live? A Scarsdale, Westchester County, New York State.

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

Q What is your profession? A Attorney.

Q Of the State of New York. A Yes.

Q A member of what firm, if any? A Wing & Russell.

Q With offices where? A 14 Wall Street.

Q It appears from Exhibit C. 5, in evidence in this matter, that Wing & Russell, on February 16, 1910, addressed a letter to the Metropolitan Steamship Company, 25 Broad Street, New York; I show you a copy of the exhibit and see if you recollect the sending out of such a letter by your firm? A Yes, I recollect the sending out of such a letter; I cannot say that it is an exact copy; I am quite certain the date is incorrect; February 18 is the date on which the letter was sent.

Q You think the correct date is February 18, 1910? A I know it is the correct date.

Q Otherwise, the letter as you recollect it, is correct? A Substantially; I cannot say that it is exact; I haven't compared it.

Q Was that letter dictated by you? A I should say that letter was dictated by me.

Q So that you are familiar with the fact of its having been sent out? A Yes.

Q This letter, as appears from its contents, was an offer by you on behalf of clients unnamed, to purchase certain steamships and car floats for the sum of $650,000; that is correct? A Correct.

Q Who was the client who is referred to but not mentioned in that letter?

Mr. Faulks. I object.

A We were acting merely as correspondents for another attorney.

Q Who was the other attorney? A Mr. Warren D. Chase of Hartford.

Q Whatever you did, you did on his behalf? A Correct.

Q As his New York correspondent? A That is rather an elaborate term; whatever we did, we did on Mr. Chase's behalf.

Q And at his request? A At his request.

Q Do you know who your real client was, as a matter of fact? A Not other than that; Mr. Chase is the only one I knew in the transaction.

Q In what form was the consideration of $650,000 to be paid, if you know? A Bonds of the Metropolitan Steamship Company, as I understood it.

Q Did those bonds ever come into your possession or the possession of your firm? A They did not, so far as I can recall.

Q Did you ever see them? A Not so far as I can recall, no.

Q How, if you know, were the bonds to be turned over to the purchaser? A I don't know. I only know that a banking house was supposed to have those bonds, from whom I understood they were to be purchased for delivery.

Q I notice that your offer required the conveyance of the unencumbered title to those steamers; do you know what the arrangement was to release the steamers from the lien of the trust mortgage? A I do not.

Q Who, if you know, attended to those details? A I know nothing whatever of the subsequent happenings of the matter.

Q After the writing of that letter? A My recollection is that either Mr. Chase or someone from his office came to New York on the afternoon of that day and thereafter conducted the matter; we had nothing more to do with it.

Q Have you any knowledge of any written bill of sale or any paper designed to convey the title of those boats and the other property men-

tioned in the letter? A I have no recollection about it; I am not prepared to say that I knew nothing about it at the time, but I have no recollection at the present time.

Q When was the matter closed out as far as you were concerned? A As far as we were concerned it was closed right then and there.

Q At your office on February 18? A Correct.

Q Who were present? A At the time this letter was written?

Q At the time we are speaking of, whatever happened on the afternoon of February 18. A I cannot be sure; my recollection is that two gentlemen were present, who I think now were representatives of the Assets Realization Company, but I wouldn't be positive on that.

Q Was one of those gentlemen Mr. John W. McKinnon, a dark haired gentleman? A My recollection is not accurate on that; I don't know.

Q Can you remember whether either of them was a Mr. Campbell Carrington, a short smooth faced gentleman? A I cannot be sure.

Q You do remember that there were two gentlemen from that concern there; is that your recollection? A There were two gentlemen there and my recollection is they were from the Assets Realization Company.

Q Who else was there? A I cannot remember anybody else.

Q Was your partner, Mr. King? A He was not.

Q You and the two gentlemen, whoever they were, from the Assets Realization Company, were there for what purpose, as appeared from their conduct? A I am sure I don't know.

Q Do you know whether they were purchasers or in what capacity? A So far as I know in neither—certainly not as purchasers.

Q They might have been there as sellers? A They might have been there as idle curiosity seekers, I don't know.

Q How long did the transaction occupy in point of time? A I should say upwards of an hour.

Q And the net result of it was the writing of that letter of February 18? A Apparently that was the result of it; I am not prepared to say that letter was the result of the call of those two gentlemen on me; they didn't ask me to write this letter.

Q I didn't mean to suggest that idea. I mean the business terminated or was crystallized in that letter? A Our connection with it, yes.

Q Do you remember whether either of those gentlemen was an officer of the Metropolitan Steamship Company to whom you addressed a letter? A I don't know.

Q What did you do with the letter after it was written? A I don't recollect.

Q How long previous to that had you had the matter referred to you by Mr. Warren D. Chase? A My recollection is that it was the afternoon before; it may have been the morning of that day, I am not certain; certainly not more than a few hours before that.

Q Did he personally come to your office in reference to the matter? A As I recall it, over the telephone; that is my recollection; I am not prepared to say definitely that no one came to the office.

Q In the conversation over the telephone which you had with Mr. Chase— A I didn't say I had a conversation with Mr. Chase.

Q Do you know whom you did have a conversation with? A I don't recall now.

Q Either Mr. Chase or someone representing him? A No, my recollection is that the matter wasn't started by Mr. Chase.

Q By whom was it started? A I don't recollect; I don't remember; I thought I knew, but I have attempted to refresh my recollection and I find I was in error and I don't remember.

Q Are you still of the view that your correspondent in the matter was Mr. Chase? A Oh, I know that.

Q He was the man to whom you were responsible, so to speak? A Correct.

Q Did he disclose to you his client? A He did not.

Mr. Faulks. No cross examination.

Mr. English. It is stipulated by consent of counsel that duplicate copies of the exhibits C. 17, C. 18 and C. 19 may be substituted.

Mr. Faulks. That is right.

GEORGE W. STERLING, being duly sworn according to law, on his oath says:

Direct examination by Mr. English.

Q Where do you live? A New York City.

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

Q What is your business? A Freight traffic manager of the Eastern Steamship Corporation.

Q Have you ever had any connection with the Metropolitan Steamship Company of New Jersey? A Yes, sir.

Q What was your connection with it? A In the same capacity, for a period of about four months.

Q And between what dates were you freight traffic manager? A As near as I can remember, it was around the first of December until about the first of March, 1909 and 1910.

Q From about the first of December, 1909, to about the first of March, 1910? A Yes.

Q What did the duties of freight traffic manager involve, generally? A Solicitor of traffic, rates, divisions, &c., with connecting lines.

Q Prior to your connection with the Metropolitan Company of New Jersey by whom have you been employed? A By the receivers.

Q You have been operating through the receivers? A Yes.

Q And before the receivership had you been connected with the Maine Company No. 1 as it is called here? A Yes, sir, connected with all of them.

Q And before that had you been with the— A Massachusetts company.

Q That was ahead of the Maine company? A Yes.

Q Please tell us what passenger steamers, if any, the New Jersey Metropolitan Company operated during the time of your connection with it? A As an operator?

Q Do you know what passenger steamers, if any, it owned? A The Harvard and Yale.

Q Why were they not operated during the time of your connection? A The winter season.

Q How long did the receivers operate, the predecessor, Maine corporation? A I think they took charge the third of February, 1908, until about the first of December, 1909.

Q And during the term of that receivership, when you say you were acting for them, did they operate the Harvard and Yale? A Yes, sir.

Q During your connection with the Maine company, before the receivership, what about the Yale and Harvard? A I think they operated in 1907 for about two months.

Q Did the Harvard and Yale carry other than freight? A Yes.

Q What, passengers? A Yes.

Q Have you as freight traffic manager any idea of the volume of traffic which those steamers did in a general way? A Freight or passenger?

Q First, freight? A Yes.

Q What was it? A They carried about 200 tons a trip.

Q A round trip? A No, one way.

Q And how did that compare with their capacity? A That was practically a full capacity.

Q Do you know about their carriage of passengers? A Only in a general way.

Q What is your knowledge about that? A I know they carried a considerable quantity, I don't know how many.

Q You don't know whether they carried a capacity of passengers or not? A No, sir.

Q As far as the freight end of it was concerned, to your knowledge, were they paying propositions, those steamers? A Not from a freight standpoint.

Q Do you know whether coupling freight with the passenger made them a paying proposition? A I cannot say as to that; I never saw the figures.

Q That was out of your jurisdiction? A I had nothing to do with that.

Q They were practically passenger boats, were they not? A Yes.

Q Do you know whether during the term of your employment with the New Jersey corporation, the defendant corporation, as it is called, they continued to hold or dispose of the Harvard and Yale? A They held them, as far as I know.

Q After you left the employ of the New Jersey company, by whom were you employed? A The Metropolitan Steamship Company of Maine.

Q You are speaking now of the second? A Yes.

Q That is referred to in the bill as Maine No. 2? A Yes.

Q And when did you go into the employ of the Maine Company No. 2? A Around the first of March, 1910.

Q How long did you remain with it? A Until the first of January, 1912.

Q And from that time you have been with the Eastern Steamship Company? A Yes, sir, Eastern Steamship Corporation.

Q Do you know whether the Maine Company No. 2 ever had in its possession or control the

Harvard and Yale? A They were operated—I don't know.

Q They were operated by the Maine Company No. 2? A As far as I know, they operated them.

Q Were you freight traffic manager of that company? A No, I was general freight agent, about the same thing, but a change of title, that is all.

Q About the same duties with the different people? A Yes, sir.

Q Have you as general freight agent knowledge of the fact that the Harvard and Yale were operated between Boston and New York by the Maine Company No. 2 and carried freight? A Yes.

Q And how long did that keep up? A The season of 1910.

Q And at the close of that season what happened to the Harvard and Yale? A They went away.

Q Do you know how the possession of the Harvard and Yale was transferred from the New Jersey Metropolitan Company to the Maine Company No. 2? A No, sir.

Q You only know it was the fact? A I don't know that; I suppose it is a fact.

Q If you as general freight agent of the Maine company were soliciting freight, it must have been the fact? A They were operated.

Q You say they remained with the Maine Company No. 2 until the close of the season of 1910, and then they went away? A Yes.

Q Do you know where they went? A Yes, sir, San Pedro, California.

Q Did you go with them to San Pedro? A No.

Q Did you see them start? A Yes, sir.

Q Do you know under what circumstances they started for San Pedro? A How do you mean?

Q How did it come about, so far as your knowledge goes, that they were started off for San Pedro? A I don't know why they went, I cannot answer that.

Q Did you have anything to do with the preparation or equipment of those ships for the trip to San Pedro? A Yes, sir.

Q What did you have to do? A Buying supplies.

Q What supplies were bought? A The steward's supplies.

Q What else? A And coal, oil, and then they had some repairs made to them; they had to change some of the boilers over to burning coal.

Q In attending to these various supplies and repairs preparatory to this voyage, did you act on your own motion or on someone's orders? A I acted on someone's orders.

Q And on what orders? On whose orders? A The president, Mr. Calvin Austin.

Q The president of the Maine Company No. 2? A Yes.

Q And what orders did you receive from Mr. Calvin Austin? A To get them ready to go.

Q Did he explain to you why they were to go? A No, sir.

Q Did he tell you they were in fact going? A Yes.

Q What did he say about that? A I cannot remember now; I just know they were going, and to get them ready, that is all.

Q Do you remember approximately what month that was in 1910? A Yes, sir, they left New York on the 16th of October, 1910.

Q Who was the president of the Eastern Steamship Corporation? A Mr. Calvin Austin.

Q The same gentleman? A Yes, sir.

Q Did you ever meet or have anything to do in a business way with Mr. Douglas Nicholson in connection with the operation of those boats? A No, sir.

Q When you were operating or acting as a freight traffic manager for the New Jersey Metropolitan Company, who was your immediate chief? A Mr. McKinnon was the president, Mr. McGregor was the general manager.

Q Can you give us his full name? A Robert McGregor.

Q Where does he live, if you know? A In New York City.

Q Has he an office in this city? A Yes, 11 Broadway.

Q What is his business? A Consulting engineer.

Q What was his connection with the New Jersey Metropolitan Company? A He was the general manager.

Q And your recollection is Mr. McKinnon was president? A I think so, I wouldn't be positive.

Q Do you know who the other officers were with whom you had any business relations? A Mr. Campbell Carrington was the secretary and treasurer.

Q Anybody else that you can name? A No, sir.

Q Do you know who the officers of the Maine Company No. 2 were at the time you were with them? A Calvin Austin was president.

Q Who else? A I think R. A. Pepper was secretary and treasurer.

Q Who else; who was general manager? A Mr. Austin was also general manager and president.

Q At that time was the Eastern Steamship Corporation in existence? A No, sir.

Q Do you know whether Mr. Calvin Austin had any steamship affiliations other than the Maine Company No. 2? A Yes.

Q What? A Eastern Steamship Company.

Q Anything else? A Not to my knowledge.

Q What was his office in the Eastern Steamship Company? A President.

Q And general manager? A He didn't have that title, just president.

Q Were you ever employed by the Eastern Steamship Company? A No, sir.

Q Since the Harvard and Yale sailed away in 1910, as you have described, have they, to your knowledge, been in New York waters since? A No, sir.

Q Is there any line of fast passenger boats operating between New York and Boston since their— A Yes, sir.

Q Do you know what boats? A Yes, Bunker Hill and Massachusetts.

Q Do you know who owns the Bunker Hill and Massachusetts? A Eastern Steamship Corporation.

Q When did they begin to run? A About in June, 1912.

Q Before they were run by the Eastern Steamship Company, a corporation, by whom were they run? A The Maine Steamship Company.

Q No. 2? A No, the plain Maine Steamship; there was a Maine Steamship Company.

Q And before they were operated by the Maine Steamship Company, by whom were they run? A They were not passenger boats prior to that.

Q They were overhauled and made into passenger boats? A Yes, sir.

Q Prior to their being turned into passenger boats, were they freight boats? A Yes.

Q And operated between what ports? A New York and Boston.

Q Do you know by what company? A Yes, the New England Navigation Company.

Q Operated those boats as freight boats? A Yes.

Q For how long, to your knowledge? A I don't know; I should say two years—two or three years.

Q That would be between what dates, as near as you can figure? A I think they started in January, 1908, and ran until the fall of 1910, I think.

Q Coming back to the equipping of these boats for their trip to San Pedro, do you remember approximately how much you had to spend in coaling and storing with oil and provisions, and repairs? A I think it was in the neighborhood of $50,000.

Q Did the money for the payment of these bills pass through your hands? A No, sir.

Q To whom did you render the bills? A I sent them to Mr. Austin.

Q Do you know who bore the expense of transporting those ships from New York to San Pedro? A No, sir.

Q Do you know who paid the bills on the Pacific coast? A No, sir.

Q Do you know Mr. Stewart? A Yes, sir.

Q What is his name? A L. H. Stewart.

Q What is his business? A I don't know what he is doing now.

Q During the fall of 1910 what was he doing? A He was general freight agent for our company.

Q You mean the Maine Corporation No. 2? A Yes, sir.

Q Do you know whether or not he went to the Pacific Coast in connection with the transfer of those two ships? A Yes.

Q Do you know he did go? A Yes.

Q Do you know for what purpose he went? A He went to pay off the crew, I believe.

Q Do you know with whose funds he paid off the crew? A No, sir.

Q What business connection, if any, if you know, did he have with Mr. Calvin Austin, the president of the Maine Company No. 2? A I don't know what you mean.

Q I want to know if he had any business relations with Mr. Calvin Austin? A He was an employee of the company.

Q And was he employed with special reference to Mr. Austin, as his assistant? A He was at one time; that was later, though.

Cross examination by Mr. Faulks.

Q Mr. Sterling, have the Bunker Hill and Massachusetts been engaged in the passenger service between New York and Boston continuously except during the winter time from June, 1911, down to the present? A Yes, sir; not by us, though, all that time.

Q But as passenger boats? A Yes.

Q How long have they been operated by your present company, the Eastern Steamship Cor-

poration, as such passenger boats? A 1912 and 1913.

Q Who operated them in 1911, what company? A Maine Steamship.

Q Did they afford a daily passenger service between New York and Boston at that time? A Yes.

Q And have ever since then except during the winter season? A Yes.

Q The Yale and Harvard were never operated during the winter season, were they? A No, sir.

Q Do the Bunker Hill and Massachusetts afford a daily service between New York and Boston? A Yes, sir.

Q The Yale and Harvard didn't run any more frequently than daily, did they? A No, sir.

Q And they were operated as passenger boats? A Yes.

Mr. Lovell. I have no questions to ask.

Re-direct by Mr. English.

Q Did they operate during the season of 1911, the Bunker Hill and Massachusetts? A Yes, sir.

Q How long did the season last? A Usually about the middle of October.

Q Beginning how early in the spring? A About the first of June.

Q Prior to June, 1911, the Bunker Hill and Massachusetts had been freight boats? A Yes.

Q They were overhauled during the previous winter? A Yes.

Q Then they were overhauled after the Harvard and Yale had been sent to the Pacific coast, is that correct? A Yes.

ROBERT McGREGOR, being duly sworn according to law, on his oath says:

Direct examination by Mr. English.

Q Where do you live? A 157 West 79th street, New York City.

Q New York City and State? A Yes, sir.

Q Are you a resident of the State of New Jersey? A No.

Q During the year 1910 did you have any connection with the Metropolitan Steamship Company of Maine referred to in the bill as Maine Company No. 2? A Well, I am not very strong in classification in regard to what the companies were; I was connected with the Metropolitan Steamship Company.

Q Was that concern a corporation? A I cannot say what incorporation it was.

Q Who was the president of the company with which you were connected? A The earlier part of the year it was Mr. J. W. McKinnon.

Q Who succeeded him, if you know? A Mr. Calvin Austin.

Q When did your connection with that company begin? A The first of January, 1906.

Q And lasted how long? A Until the first of January, 1911.

Q What was your position in the company? A I was superintendent and engineer, and then general superintendent and general manager for a short term in 1910, from about the fifteenth of January until sometime in March.

Q Do you know whether the company which you worked for under the name of the Metropolitan Steamship Company was one concern all the way through or whether it was companies of different states, but under the same name,

or don't you know? A I am not qualified to state that.

Q When did you become general manager of the concern in 1910; when during that year? A About the fifteenth of January.

Q That lasted how long? A Sometime in March as far as I can recollect; I am not sure of that.

Q During the time that you were general manager of this company did it operate the steamships Harvard and Yale? A No, the steamships were not operated until sometime about the first of May that year.

Q That was when the season opened up? A Yes.

Q But did it own the steamships during the time when you were general manager? A I cannot say who owned them; I know I did the work on them and prepared them ready for going on the service.

Q When did you do that? A During March and April of 1910.

Q You did that in your capacity of chief engineer? A No, my capacity as superintendent.

Q And they were fitted out for service? A Yes.

Q After they started in, between what ports did they operate? A New York and Boston.

Q For how long, to your knowledge? A They were taken off about the first of October, as near as I can say.

Q Then what was done with them? A I left for England on the 26th of September, so what was done after that is only a matter of hearsay.

Q When did you return from England? A The end of October.

Q When you got back the end of October were the ships still in the possession of the company? A No, they had left New York.

Q Did you learn where they had gone? A I knew they had gone to San Francisco.

Q Did you have anything to do with preparing those ships for going to the Pacific coast? A I prepared a specification for their alterations, to make them seaworthy, before I left on my vacation.

Q Did they require very elaborate changes on the ships? A Not very elaborate.

Q Do you remember approximately how much it cost to make those changes? A The preliminary cost of my specification was somewhere about $25,000 a steamer, but I had nothing further to do with the bills after that, so I don't know what the actual cost was.

Q Your estimate was about $25,000 for each steamer? A Yes.

Q Do you know anything about the expense of equipping them to make the voyage to the Pacific coast? A That was the expense.

Q That was the overhauling? A That was the structural alteration.

Q I refer now to the expense for coal and provisions and matters of that character, and insurance? A I know nothing at all about that.

Q You don't know about that? A No.

Q From whom did you receive instructions to overhaul these ships to make them seaworthy, as you expressed it, so they could go to the Pacific coast? A From the president of the company, Mr. Calvin Austin.

Q From anybody else? A No.

Q Did you consult with anybody in connection with that general matter, besides Mr. Austin? A No, I don't think that I did.

Q Do you know Mr. Edward D. Robbins? A I have met him once or twice.

Q When and where did you meet him? A I met him once or twice in 25 Broad street; he happened to be in the office while I was there.

Q In whose office was that? A The Assets Realization Company.

Q Where else? A I met him in the early part of September, 1910, on two occasions at his office.

Q Where? A Grand Central Station, New York City.

Q What were the occasions in September, 1910, which caused you to meet him at his office? A I went there to give any assistance required to the president of the company, Mr. Austin.

Q You met Mr. Austin at Mr. Robbins' office? A Yes.

Q And you went there to give him any assistance required in connection with what matter? A The question under discussion at the time I am not aware of, I wasn't in the conference; I just sat in one end of the room and Mr. Austin was speaking to Mr. Robbins in the other end and at different times he came back and asked me questions about the line and I answered as far as I knew.

Q "About the line," what do you refer to? A About the Harvard and Yale and different boats.

Q You mean the line operated by the Metropolitan Steamship Company? A Yes.

Q At the time you were at Mr. Robbins' office and Mr. Austin was there, was the Harvard

or Yale mentioned? A It was mentioned between Mr. Austin and myself; that is as far as I know; I wasn't in the conference at all.

Q And at that time had you received instructions from Mr. Austin to fit these steamers out for their trip to the Pacific coast? A I had received instructions to make a general arrangement plan of how we could get them there.

Q Prior to that conference? A Yes.

Q At the time of the conference at Mr. Robbins' office did any of the conversations which you had with Mr. Austin relate to that general subject?

Mr. Faulks. We object to this upon the ground that any such conversation would not be competent or binding upon the defendants or evidential against them; I understand that Mr. Austin was not at that time or ever an officer of the defendant Metropolitan Steamship Company.

Q At the time you had this conference with Mr. Austin was he an officer of the company that you worked for? A He was president of the Metropolitan Steamship Company.

Q Which you understood you were working for? A Yes, I was working for that company.

Q So you regarded him as your superior officer? A Yes.

Q I ask you again whether the conversation which you had with Mr. Austin at Mr. Robbins' office related in any way to the removal of the Harvard and Yale to the Pacific coast?

Mr. Faulks. I make the same objection and call counsel's attention to the fact that it appears from the exhibits offered by the complainant in this case, that Mr. Austin

was never an officer or director of the Metropolitan Steamship Company of New Jersey.

Mr. English. I offer in evidence a copy, received from the Secretary of State of the State of Maine, of the annual report of the Metropolitan Steamship Company of Maine, which report is dated June 1, 1910, the company referred to being Maine No. 2 referred to in the amended bill of complaint.

Mr. Faulks. We have no objection to that.

(Marked Exhibit C. 23.)

Mr. English. I also offer in evidence a similar paper, dated September 29, 1911, relating to the same company.

Mr. Faulks. No objection.

(Marked Exhibit C. 24.)

Mr. English. Inasmuch as by Exhibits C. 23 and C. 24 it appears that the president of the Metropolitan Steamship Company of Maine No. 2 was Mr. Calvin Austin, I press the question which is objected to.

Mr. Faulks. The very grounds on which counsel claims that the evidence is admissible, shows that it is not admissable, because Mr. Austin was connected with the Metropolitan Steamship Company of Maine, No. 2, and not with the defendant company, and this witness was employed by the Maine Steamship Company No. 2 and not by the defendant company.

Q (Last question read.) I ask you again whether the conversation which you had with Mr. Austin at Mr. Robbins' office related in any way to the removal of the Harvard and Yale to the Pacific coast? A I should say it would

in a general manner; I was there in an advisory capacity, to see if certain things could be done.

Q Did the company for which you worked have any freight boats? A I looked after four of them.

Q Do you remember their names? A Yes, H. F. Dimock, Herman Winter, H. M. Whitney and James S. Whitney.

Q And up to what year, or month of what year, if you can remember, did you have anything to do with those freight boats? A Right up until the first of January, 1911.

Mr. Faulks. That was the time when you ceased to be connected with the company?

Witness. Yes, when I ceased my connection altogether with the company.

Q When you went into this concern in 1906, were those boats in the possession of the company? A Certainly.

Q Who was the president of the company that you worked for in 1906? A Calvin Austin, as far as I remember.

Q He was the president of the company for which you worked for how long from 1906? A I am a little hazy in my dates, but the company went into the hands of a receiver—I haven't got that date—and Mr. Austin was still connected as practically the operating receiver.

Q Did you work for the concern during the receivership? A Yes.

Q And after the receivership you continued right along? A Yes.

Q Who was the president of the company that you worked for immediately after the receivership, after you got through working for the receiver? A Mr. McKinnon.

Q Who succeeded Mr. McKinnon, so far as you know? A As I said before, Mr. Austin.

Q You have already said you don't know whether there was a different corporate entity you worked for, but it all had the same name? A I worked for the Metropolitan Line, that is all I know.

Q Who was president of the company which last had possession of these freight boats? A Mr. Austin.

Q Do you know Mr. Charles A. Mellen, formerly president of the New Haven Railroad? A No, sir.

Q Do you know Mr. L. H. Stewart? A I know a Mr. Stewart who was connected with the Metropolitan Line while I was there; I am not sure of his initials, though.

Q What was his connection with the line? A He was claim agent.

Q Do you know where he had his headquarters? A Pier 14, North River, during the time I was there.

Q What time do you speak of, between what dates? A The latter part of 1910.

Q Sometime during 1910? A Yes, the latter part of the year.

Q It was then that he was claim agent? A Yes.

Q With headquarters at Pier 14, North River? A Yes.

Q Do you know whether this Mr. Stewart had any connection with the New Haven Railroad? A I do not.

Q Where did you ever meet him, in what place? A In the office.

Q Do you remember the time when Mr. McKinnon became president of the company that

you were employed by? A Well, I am not quite sure of the date; I should imagine it would be sometime about the first of January, 1910.

Q It followed the receivership? A Yes.

Q Then do you remember for how long a time it was that you understood that he was the president? A Up to the appointment of Mr. Austin, whatever date that was.

Q Have you any knowledge as to who owned or controlled the company that you worked for? A No.

No cross examination.

MADISON G. GONTERMAN, being duly sworn according to law, on his oath says:

Direct examination by Mr. English.

Q Where do you live? A In Greenwich, Connecticut.

Q Are you a resident of the State of New Jersey? A No.

Q What is your business at the present time? A I am an attorney.

Q Practising where? A I am assistant attorney for the New York, New Haven & Hartford, and my office is at the Grand Central Terminal.

Q What were your business relations with them in 1910 and 1911? A I didn't begin working for the New Haven until the latter part of the year 1910, I think along about the first of December, 1910.

Q That is when you first became connected with the New Haven Railroad? A Yes.

Q That connection continued down to the present time? A Yes.

Q As a part of your duties after your connection with the New Haven Railroad, did you have charge of any claims, or anything of that character, accident claims? A I handled accident claims and damage claims.

Q On behalf of what company? A On behalf of the New Haven, New England Navigation Company, Central New England, New York & Stamford, West Chester Street Railway, New York & Stamford Railway.

Q Did you have charge of claims on behalf of the Metropolitan Steamship Company? A I was attorney for the Metropolitan Steamship Company in a number of cases.

Q I mean they were the same character of cases as you had in charge for these other companies you enumerated? A Most of those were, I think—all of them relating to shipments.

Q Which company are you speaking of now? A The cases I had for the Metropolitan Steamship Company, I appeared as personal attorney for them, not in connection with my work with the New Haven Railroad.

Q Were you paid in addition to the salary which you received from the New Haven, for that work by the Metropolitan? A I haven't been paid as yet, but I hope to be.

Q You never rendered a bill? A I never rendered a bill; the work was insignificant; there were a few municipal court cases.

Q Wasn't it understood as a matter of fact, that although you were employed by the New Haven Railroad in the matters you have enumerated, that the work for the Metropolitan Steamship Company was an additional matter, for which you received no compensation? A I didn't so understand it.

Q But you never rendered a bill to them? A I haven't rendered a bill, no.

Q And when was it you ceased in any manner appearing for or representing the Metropolitan Steamship Company? A Well, after the formation of the Eastern Steamship Company, of course, I didn't appear any more for the Metropolitan.

Q And when was the Eastern Steamship Company formed? A I don't know exactly.

Q Your best estimate as to the time; was it about December, 1911? A My impression is that it was somewhere in the latter part of 1911 or the early part of 1912, but I don't know the exact date. I may not come within six months of it.

Q The Metropolitan Steamship Company went into the Eastern Steamship Corporation, didn't it? A I don't know anything about the details of it; I had nothing to do with it.

Q Don't you know as a matter of common knowledge, that that is the fact? A Well, I assume so.

Q Were you in any way connected with the Eastern Steamship Company after it was formed? A I think that I represented a number of suits after that time, but I am not absolutely certain about that.

Q The Eastern Steamship Company is owned and controlled by the New York, New Haven & Hartford Railroad, is it not? A I don't know anything about it.

Q Did you receive additional compensation for what you did for the Eastern Steamship Corporation after its formation? A I haven't as yet.

Q Ever present a bill? A I haven't rendered a bill.

Q Don't expect to, do you? A I expect to be paid for my services.

Q By the Eastern Steamship Corporation? A Yes.

Q Apart from the New Haven Railroad? A Yes.

Q What is your position in the New Haven? A Assistant attorney.

Q With headquarters at the Grand Central Station? A Yes.

Q Under whose instructions did you act when you appeared for the Metropolitan Steamship Company in these various matters that you spoke of? A Mr. Case, the treasurer.

Q The treasurer of what company? A Of the Metropolitan.

Q Was that the Metropolitan Steamship Company of New Jersey or Maine? A Of Maine.

Q At that time was the Metropolitan Steamship Company of Maine operating the steamers Harvard and Yale? A At which time, in December?

Q At the time you say you did these various things? A I don't know anything about the boats that they operated; I don't know whether the boats were here then or not.

Q Who is Mr. Case, apart from being treasurer of the Metropolitan Steamship Company of

Maine? A He is an attorney and I understand he resides in Hartford, Connecticut.

Q Do you know whether he has any connection with the New Haven Railroad? A I do not.

Q Did you ever have any work to do for the Metropolitan Steamship Company of New Jersey? A No, none whatever. I might say this, I think one of the cases that—I don't know which one it was—some corporation of which Mr. Stewart had some funds, and I didn't see that it had any connection with the Metropolitan of Maine, and I don't remember what that case was, but it was rather an old matter, and that may have had something to do with the Metropolitan of New Jersey, but I don't know. That is the only one; I didn't settle that.

Q Who was the Mr. Stewart that you referred to? A He was Mr. L. H. Stewart.

Q What was his business at that time? A Well, he was, I believe, the general claim agent of the Metropolitan Steamship Company of Maine.

Q And did he also act for the Metropolitan Steamship Company of New Jersey? A I don't know that of my own knowledge, but I understood that he had some funds of it, or something or other—represented receivers or something, but I don't know.

Q And was he apparently acting for some matter which affected the Metropolitan Steamship Company of New Jersey? A I understood that he was adjusting some claims for receivers.

Q Were they claims for the receivers or claims which had been inherited by the Metropolitan Steamship Company from the receiver?

A I don't know anything about those claims; I understood that in a general way from him.

Q You say he was the claim agent of the Metropolitan Steamship Company of Maine? A When I undertook to represent the Metropolitan in this case, he was the claim agent—I don't mean the personal injury—for the Metropolitan of Maine, as I understood it.

Q Do you know what connection he had with the New Haven Railroad? A When, at that time?

Q Yes. A I don't know that he had any.

Q You don't know about that, one way or the other? A No.

Q Did you ever see Mr. Stewart around the offices of the New Haven Railroad at the Grand Central Station? A Yes.

Q And during that time you saw him there? A I don't think so.

Q When do you first remember seeing him around the New Haven office? A I didn't—afterwards he was assistant to the president of the Eastern Steamship Company.

Q Mr. Calvin Austin? A Yes—I think it was after that that I saw him in the Grand Central Terminal.

Q Do you know where Mr. Stewart is at the present time? No.

Q Is he working for the New Haven now? A I think he is.

Q Can you tell us what courts these various cases were in that you handled for the Metropolitan Steamship Company? A Most of them were in the municipal courts.

Q In New York? A Yes, one of them was in the Admiralty Court and one in the City Court.

Q What municipal courts were you in, in connection with those matters? A I think one was in the first district, one was in the second district, and one was in some district in Brooklyn; only one of the cases ever came to trial; they were simply a matter of adjustment.

Q What court was the admiralty suit in, Admiralty Court, Southern District of New York? A Yes.

Q And what other court? A City Court? A I don't think there were more than half a dozen cases altogether.

Q Between what dates did you act for the company? A For the Metropolitan?

Q Yes. A Those cases in which I represented them continued from sometime in December, 1910, until the formation of the Eastern Steamship Company, whenever that was.

Q Let us say the latter part of 1911? A I don't know the exact date.

Q You haven't made out your bill yet for services? A No, I haven't.

Cross examination by Mr. Faulks.

Q These matters in which you acted for the Metropolitan Steamship Company of Maine were all claims growing out of shipments, as I understand? A I think so.

Q And there were, you think, about half a dozen of them altogether? A I think not more than that.

Q So far as you know, none of those cases were against the Metropolitan Steamship Company of New Jersey, were they? A No, not so far as I know.

Q Was your client, or the company for which you were acting, the plaintiff or libellant in any

of those cases? A They were always the defendant.

Q How much time, according to the best of your recollection did you give to those cases altogether; I mean the aggregate of your time you put in on them? A I put very little time on the cases, because my work consisted principally of putting in an appearance and then getting hold of the file and taking the matter up for adjustment; the adjustment was handled by either the agent or the freight claim agent.

Q Not by you? A I cannot say about the time; of course, the cases took some time before they were discontinued, but I never had to appear in court and try but one case.

Q In which court was that? A That was in the Second Municipal Court, and these six or seven cases covered all the cases in which I represented the Metropolitan and the Eastern. Some of this time covered the period after the formation of the Eastern Steamship Company.

Q I didn't quite understand what it was you said about the case in which Mr. Stewart had some interest or had some fund that was involved. A There was one claim presented, and so far as I could find out, it wasn't a proper claim against the Metropolitan of Maine, and I understood that Mr. Stewart was adjusting some old claims, and whether this was against the Metropolitan of New Jersey or one of the other corporations, I wouldn't be sure, but I know that that claim was not against the Metropolitan of Maine which I represented, and it was in some way adjusted by him. I didn't go into the details of it at all, because it didn't concern the Metropolitan of Maine.

Q You didn't yourself adjust any of those cases, as I understand? A I sometimes agreed upon the amount, and after talking it over with Mr. Case and Mr. Stewart, and sometimes the local agent, Mr. Rosencranz, then I would send the file in to the proper officers of the Metropolitan for the voucher.

Q At that time were both Mr. Stewart and Mr. Case connected with the Metropolitan Steamship Company of Maine? A I don't know how long either of them—how long their connection continued with the Metropolitan of Maine. When I first knew of Mr. Stewart, he was located in Boston, and I had to write to him there, and whether they were both connected at the same time, I don't know.

Q They were connected, as you understood, either with the Metropolitan Steamship Company of Maine or the Eastern Steamship Company during the time covered by your services? A I know Mr. Case was connected with the Metropolitan of Maine; I don't know that he was ever connected with the Eastern Steamship Company. I know that Mr. Stewart was connected with both. I know there was one case, I think by the Edison company, that was brought, which apparently was not against the Metropolitan of Maine; whether it was against one of the other companies, I don't know, but I know after I determined that fact, it was discontinued.

Q Who is this Mr. Rosencranz that you speak of? A The local agent in New York of the Metropolitan of Maine.

Q Did you have any disbursements in connection with the services rendered by you in these matters? A I did.

Q Were those paid? A Those were paid.

Q By whom? A By the Metropolitan. They had a regular form of voucher which I made out and sent in to the auditor, and they were paid in due course.

Q Were any of them paid by the New Haven Railroad Company or any of its affiliated companies? A None of them.

Q During the time mentioned, was your contract or agreement with the New Haven such as to require your giving your services exclusively to it or its allied companies? A No, I was permitted to handle outside business if it didn't interfere with my other work.

Q And did you handle any other outside business except this Metropolitan Steamship business? A I did.

Q And on more than one occasion? A Oh, yes.

Q Did you understand that you were in any way retained or employed by the New Haven company or any other of its affiliated companies in these Metropolitan matters? A I did not.

Q You regarded your employment, then, as being by the Metropolitan? A I did.

Q Have you received anything from the New Haven or any of its allied companies for the services rendered in the matter? A I have not.

Q Have you any expectation of receiving anything from such source for those services? A I do not—from the New Haven?

Q Yes. A No.

Q Why is it you haven't rendered a bill for those services up to this time? A Well, my bill wouldn't be very large, and I was rather in hopes that the work would develop into something permanent, and it has been more or less neglect also, to some extent.

Madison G. Gonterman, re-direct.

Q The reason was not because of your connection with the New Haven Railroad Company? A No.

Q You were retained in these matters by Mr. Case, the treasurer of the Metropolitan Steamship Company of Maine? A Yes.

Q And you acted under his direction in whatever you did? A Yes.

Re-direct by Mr. English.

Q When you addressed Mr. Stewart in Boston, by what title did you address him? A I think I addressed him as freight claim agent.

Q Of what? A The Metropolitan Steamship Company.

Q You say that these cases which did not go to trial and in which you entered an appearance, you talked over the adjustment with the agent? A I talked it over with the agent and tried to get the facts, of course.

Q Who was the agent you talked with? A The agent was Mr. Rosencranz, and I think there was a Mr. Smith, that afterward came on, but I don't know whether he came while the Metropolitan was still in operation or not; I know he came on after the Eastern; I talked some of them over with him, possibly.

Q What was Mr. Rosencranz' office? A He was the local agent of the Metropolitan in New York and had charge—

Q Local agent for what purpose, sell tickets or what? A He had general charge of the offices—the freight agent, perhaps; I don't know whether there was a separate passenger agent or not, but I know he had charge of the freight matters.

Madison G. Gonterman, re-direct.

Q You say you were assistant attorney of the New Haven; who was your chief? A Charles M. Sheafe, Jr.

Q What is his employment in the New Haven? A He is the local attorney of the New York, New Haven & Hartford, in New York.

Q In this city? A Yes.

Q In connection with claim matters? A In connection with all matters.

Q He of course reports to the head law department of the company? A Yes.

Q That is Mr. E. D. Robbins? A Yes, New Haven.

Q So that your ultimate chief in the law department was Mr. E. D. Robbins, New Haven? A Yes.

Q Were you in the habit of handling business for any outside concerns other than companies that you mentioned? A I handled a few matters; I never had very much opportunity to handle much, but I handled it whenever I could.

Q Did it extend to clients other than any of these steamship companies? A Oh, yes.

Q And trolley or railroad companies? A Yes.

Q You once or twice in your cross examination used the expression "one or the other companies," in talking about this Metropolitan Company of New Jersey; that Metropolitan Company of New Jersey was one of the companies which was generally under the general direction of your office? A No, I was always more or less confused in the number of companies, and I understood there was a Metropolitan of—an old Metropolitan of Massachusetts and a Metropolitan of New Jersey, a Metropolitan of Maine, and I think two Metropolitans of Maine; the only

company that I knew anything about was one of the Metropolitan companies of Maine, and if you call it that, I don't exactly know when it was organized.

Q You also understood generally, did you not, that all those Metropolitan companies were under the general sheltering wing of the New Haven? A No, I did not.

Q You didn't understand that? A No.

Q You didn't know anything about it? A I didn't have anything to do with their corporate matters; my work was entirely confined to these few suits.

Q How did you come to meet Mr. Case, so you were asked to act for him as you described? A He had some small case and he was apparently trying to adjust it, and it was brought in the municipal court, and while he expected to adjust it, he wanted a little more time, and he came to me to know something about the procedure, as he was a Connecticut attorney and wasn't familiar with municipal court practice in New York, and I gave him some advice and then he subsequently suggested that I appear in those cases. I don't know whether I appeared in all other cases or not.

Q You say "he came to me;" you mean he came to the office of the claim attorneys of the New Haven in New York and you happened to encounter him or he was assigned to you, or did he come to you in your private capacity? A I think he saw me in my office at the Grand Central Terminal.

Q You had never met him up to that time? A I don't know that I had.

Q Was he introduced to you by anybody? A I don't remember that; I know that there

were men around the office who knew him, because there are a number who, I think, knew him, because there are a number there who are from Connecticut, and I understand he is well known there.

Q Well known where? A In Connecticut.

Q Also well known in the New Haven Railroad? A I don't know anything about that.

Re-cross by Mr. Faulks.

Q Did you understand that Mr. Case came to consult you as a member of the law department of the New Haven Railroad or as an attorney who was practising in New York and who had familiarity with the New York practice? A I understood that he didn't understand the municipal court practice and he knew that I had a great deal of experience in it, and in the first place he came to me for information on the subject.

Mr. English. That hardly answers the question.

Q I want to know whether you understood that he was consulting you as a member of the law department of the New Haven or simply as an attorney who practiced in the New York courts—whether he consulted you in your official capacity, as to speak, as a member of the law department, or in your private capacity as a practising attorney? A I assumed that he consulted me in my private capacity, because he asked me if I would be permitted to handle those cases.

Q In your private capacity? A In my private capacity.

Louis A. Linz, direct.

Re-direct by Mr. English.

Q Did you make any suggestion of a retainer or anything of that character? A We didn't go into that at that time.

Q Have you gone into it at any time since? A With him?

Q Yes. A No, I don't know how long he was connected with it, I didn't see him very much.

Q Do you know Mr. Warren D. Chase? A No.

LOUIS A. LINZ, sworn for complainant.

Direct examination by Mr. English.

Q Where do you live? A Brooklyn.

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

Q You were subpoenaed to produce the books and records of a corporation known as the Chilmark Company; have you produced them? A I have them here.

Q Are you an officer and director of the Chilmark Company? A I am.

Q What office do you hold in it? A Secretary.

Q How long have you been secretary? A I don't remember now.

Q Are you a director? A I am.

Q How long have you been a director? A I don't remember.

Q How much stock do you own in the company? A One share.

Q Under what state is the company incorporated, New York? A I don't know.

Q Where is the office of the company? A No. 1 Madison avenue.

Q In whose office in that building? A Mr. Nicholson's office.

Q Mr. Douglas Nicholson? A Right.

Q This gentleman who sits here? A Yes.

Q That is the headquarters of the company, is it? A That is where the books are kept.

Q Let us see those books. How long have you been a director, do you know? A No.

Q Who asked you to be a director? A Mr. Nicholson.

Q How long have you known Mr. Nicholson? A Ten years or longer.

Q What is this book which I show you? A That is the minute book.

Q The minute book of the Chilmark Company? A Yes.

Q And kept by you as secretary? A Yes.

Mr. Faulks. I object to your looking at that book.

Mr. English. Why?

Mr. Faulks. Because I think that is not the proper practice.

Mr. English. What do you understand it to be?

Mr. Faulks. For you to offer in evidence anything you want from the book.

Mr. English. How can I tell until I have seen it?

Mr. Faulks. I don't know. I do not understand that you are at liberty to go through the book of a company that is not a party to this litigation.

Q Look at the minute book and tell me the date of the first meeting of the stockholders' company? A Twenty-sixth of October, 1910.

Q Where was the meeting held? A 203 Broadway.

Q Was that in Mr. Nicholson's office at that time? A It was.

Q Who was there at that meeting? A I don't remember.

Q Look at your minutes and see; you were the secretary; you have the minutes before you; who are recited as having been present? A Mr. Smith, Mr. Kaseman and myself.

Q Turn to the first record of meeting of directors of the Chilmark Company; when was that held? A Page 67 of the book.

Q Who were elected directors, according to the minutes, and who were the directors present? A Mr. Smith, Mr. Kaseman and myself.

Q Are there any other meetings of directors except those beginning on page 67? A I think that is all.

Q So that this book contains the first minutes of the first meeting of stockholders of the corporation and first minutes of the meeting of directors? A I think so.

Q That is all? A I think that is all.

Mr. English. I offer in evidence the minute book produced by the witness.

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

(Marked Exhibit C. 41.)

Q Who is Mr. Kaseman? A I don't know.

Q Who is Mr. Smith? A A friend of ours.

Q When you say "ours," whom do you refer to? A Mr. Nicholson and myself.

Q A mutual friend of yours and Mr. Nicholson? A Yes.

Q You don't know where Mr. Kaseman hailed from? A Brooklyn, I believe.

Q You never met him before? A No, sir.

Q And never met him since until today? A I might have; I don't remember.

Q You don't recall him? A No, sir.

Q The company has never had any meeting since the first meeting recorded in this book? A I don't know whether they have or not.

Q You are secretary of the company? You would remember it if it was true? A It is in there if they have held it.

Q If it is not in here, they haven't held it? A Yes.

Q What is the business of the Chilmark Company? A I don't know.

Q You are one of the directors, aren't you? A I am.

Q And according to these minutes you, as a director, voted on the advisability of purchasing from Mr. Douglas Nicholson 14,373 shares of stock of the Metropolitan Steamship Company, a corporation of the State of New Jersey; and according to the minutes you and your co-directors concluded that that stock was necessary to the business of the company; how could you vote that that stock was necessary to the business of the company, if you didn't know what the business of the company was? A I knew at that time, I must have.

Q You have forgotten since? A I have.

Q Notwithstanding you are the secretary and director of the company? A Right.

Q Can you turn back in your mind to October, 1910, and recollect what it was that made

you think that this stock of the New Jersey Company, the Metropolitan Steamship Company of New Jersey, was essential to the business of your Chilmark Company? A No, sir.

Q You cannot remember that? A No, sir.

Q Do you know the signature of Mr. Douglas Nicholson? A I do.

Q I show you here what is incorporated in the minutes of this company, on page 17, a letter purporting to be signed Douglas Nicholson and addressed to the Chilmark Company; that is his signature? A It is.

Mr. English. I will read the letter.

Mr. Faulk. What is the object of it? I object to your doing that; you have already offered the whole book; if there is any particular page, offer it.

Mr. English. I call particular attention to page 17 of the book, which is a part of the minutes of the incorporators, upon which page is spread out in full a letter from Mr. Nicholson, just identified by the witness, to the Chilmark Company, offering to sell—

Mr. Faulks. I object to your stating the contents of the letter.

Mr. English. I am making an offer.

Mr. Faulks. You have offered the book and offered the page, and you can only have one purpose in insisting on reading the letter in the record or stating the contents.

Mr. English. What purpose?

Mr. Faulks. The purpose is to give publicity at this time in advance of the hearing. There can be no other possible object.

Mr. English. I have no such thought in mind. Do you want to have all this written up?

Mr. Faulks. You can offer any part of it you want.

Mr. English. I have offered the whole thing.

Mr. Faulks. You can take your time to look over it and have such parts of it written up as you want.

Mr. English. All right. Having offered in evidence the book, I will ask the Master to make a copy for the benefit of the Court, of the certificate of incorporation which appears on pages 3 to 6, inclusive, of the book, and that part of the minutes on page 16, with the words "The secretary then presented and read a proposal from Douglas Nicholson," etc., to the end of the minutes of the incorporators' meeting, which conclude on page 19.

I also offer in evidence the minutes of the meeting of directors, which begin on page 67, and I will ask the Master to produce for the Court out of that, that part of the minutes which begins with the bottom paragraph on page 71, beginning "The secretary then reported that a proposition had been submitted," and running through the balance of the minutes, which end on page 73.

Q What is this book that I show you? A The stock book.

Q Is that in your custody as secretary of the company; you produce it? A I do.

Mr. English. I offer that in evidence.

Mr. Faulks. No objection.

Mr. Ward. I object on the same grounds.

(Marked Exhibit C. 42.)

It is stipulated and agreed that the stock certificate book shows the following:

Certificate No. 1, for 4 shares, issued to George M. Kaseman.

Certificate No. 2, for 1 share, to Arthur L. Smith.

Certificate No. 3, for 1 share, to Louis A. Linz.

Certificate No. 4, for 497 shares, to Douglas Nicholson.

All the foregoing certificates being dated October 26, 1910.

Certificate No. 4 to Douglas Nicholson is canceled October 26, 1910, and certificate No. 5 issued in lieu of it, for said 497 shares, to Rodney T. Martinsen, dated October 26, 1910.

Q What is this book I show you? A Stock ledger.

Q Are there any entries in it? A Yes, sir.

Q That shows the stock issue as set out in the certificate book? A That is just what it is made out for.

Q What is your business, Mr. Linz? A Private secretary.

Q Private secretary to whom? A Mr. Comfort.

Q Who is he? A President of the Reed Ice Cream Company.

Q Over in Brooklyn? A Both places, Brooklyn and New York.

Q Do you know Mr. Smith's business? A I do.

Q What is his business? A Manager.

Q Of what? A Reed Ice Cream Company of New York.

Q Do you know Mr. Kaseman's business? A I do not.

Q I see by the minutes that you voted to purchase these shares of stock which Mr. Nicholson had to sell, for $50,000; do you know what the value of them was? A I did not.

Q Who told you to vote that way? A Who told me to vote that way?

Q If you didn't know anything about it, you must have done it at some one's request. A I probably did.

Q Whose? A I guess Mr. Nicholson's, if anybody.

Q He fixed the whole thing up, did he? A I guess so.

Q He had the minutes typewritten? A He had them typewritten.

Q They were typewritten before you held your meeting? A No, sir.

Q Were they dictated while you were there? A No, sir.

Q When were they written up? A They must have been written up after the meeting.

Q You didn't see them until after the meeting? A No, sir.

Q Whatever you did in the matter, you did at the request of Mr. Nicholson? A Yes.

Q And Mr. Smith did the same? A I think so; I don't know what he did.

Q And Mr. Kaseman the same? A Probably.